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**APPENDIX OF
APPELLEES PROVIDENT NATIONAL BANK
AND
CENTRAL PENN NATIONAL BANK
OF PHILADELPHIA**

A. RELEVANT STATUTE

Bank Merger Act of 1966

**Public Law 89-356
89th Congress, S. 1698
February 21, 1966**

AN ACT

To establish a procedure for the review of proposed bank mergers so as to eliminate the necessity for the dissolution of merged banks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended to read:

“(c)(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured bank shall—

“(A) merge or consolidate with any noninsured bank or institution;

“(B) assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution;

“(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities

for any portion of the deposits made in such insured bank.

“(2) No insured bank shall merge or consolidate with any other insured bank or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured bank except with the prior written approval of the responsible agency, which shall be—

“(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank;

“(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank);

“(C) the Corporation if the acquiring, assuming, or resulting bank is to be a nonmember insured bank (except a District bank).

“(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a ‘merger transaction’) shall, unless the responsible agency finds that it must act immediately in order to prevent the probable failure of one of the banks involved, be published—

“(A) prior to the granting of approval of such transaction,

“(B) in a form approved by the responsible agency,

“(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

“(D) in a newspaper of general circulation in the community or communities where the main offices of the banks involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

"(4) In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to prevent the probable failure of one of the banks involved, shall request reports on the competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other two banking agencies that an emergency exists requiring expeditious action.

"(5) The responsible agency shall not approve—

"(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

"(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

"(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable

failure of one of the banks involved and reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General and the other two banking agencies of the existence of an emergency requiring expeditious action and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency.

“(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency’s approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

“(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

“(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act,

15 U.S.C. 2), but nothing in this subsection shall exempt any bank resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

“(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

“(8) For the purposes of this subsection, the term ‘antitrust laws’ means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1-7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12-27), and any other Acts in pari materia.

“(9) Each of the responsible agencies shall include in its annual report to the Congress a description of each merger transaction approved by it during the period covered by the report, along with the following information:

“(A) the name and total resources of each bank involved;

“(B) whether a report was submitted by the Attorney General under paragraph (4), and, if so, a summary by the Attorney General of the substance of such report; and

“(C) a statement by the responsible agency of the basis for its approval.”

(b) Section 18 of such Act is further amended by adding at the end thereof the following new subsection:

“(i)(1) No insured State nonmember bank (except a District bank) shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

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"(2) No insured bank shall convert into an insured State bank if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approving such conversion, without the prior written consent of—

"(A) the Comptroller of the Currency if the resulting bank is to be a District bank;

"(B) the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank (except a District bank);

"(C) the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank).

"(3) Without the prior written consent of the Corporation, no insured bank shall convert into a noninsured bank or institution.

"(4) In granting or withholding consent under this subsection, the responsible agency shall consider—

"(A) the financial history and condition of the bank,

"(B) the adequacy of its capital structure,

"(C) its future earnings prospects,

"(D) the general character of its management,

"(E) the convenience and needs of the community to be served, and

"(F) whether or not its corporate powers are consistent with the purposes of this Act."

SEC. 2. (a) Any merger, consolidation, acquisition of assets, or assumption of liabilities involving an insured bank which was consummated prior to June 17, 1963, the bank resulting from which has not been dissolved or divided and has not effected a sale or distribution of assets and has not taken any other similar action pursuant to a final judgment under the antitrust laws prior to the enactment of this Act, shall be conclusively presumed to have not been in violation of any

antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

(b) No merger, consolidation, acquisition of assets, or assumption of liabilities involving an insured bank which was consummated after June 16, 1963, and prior to the date of enactment of this Act and as to which no litigation was initiated by the Attorney General prior to the date of enactment of this Act may be attacked after such date in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

(c) Any court having pending before it on or after the date of enactment of this Act any litigation initiated under the antitrust laws by the Attorney General after June 16, 1963, with respect to the merger, consolidation, acquisition of assets, or assumption of liabilities of an insured bank consummated after June 16, 1963, shall apply the substantive rule of law set forth in section 18(c)(5) of the Federal Deposit Insurance Act, as amended by this Act.

(d) For the purposes of this section, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1-7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12-27), and any other Acts in *pari materia*.

SEC. 3. Any application for approval of a merger transaction (as the term "merger transaction" is used in section 18(c) of the Federal Deposit Insurance Act) which was made before the date of enactment of this Act, but was withdrawn or abandoned as a result of any objections made or any suit brought by the Attorney General, may be reinstituted and shall be acted upon in accordance with the provisions of this Act without prejudice by such withdrawal, abandonment, objections, or judicial proceedings.

Approved February 21, 1966.

*Application for Approval to Merge***B. PROCEEDINGS BEFORE COMPTROLLER****Application and Economic Brief****COMPTROLLER OF THE CURRENCY
WASHINGTON, D. C.****Application
For Approval to Merge**

Date Filed: December 3, 1965

Central-Penn National Bank of Philadelphia

| | |
|--------------------------|---------------|
| (Charter or Buying Bank) | (City) |
| Philadelphia | Pennsylvania |
| (County) | (State) |
| | 723 |
| | (Charter No.) |

and

Provident National Bank

| | |
|--------------|---------------|
| (Other Bank) | (City) |
| Philadelphia | Pennsylvania |
| (County) | (State) |
| | 15422 |
| | (Charter No.) |

UNDER THE CHARTER OF***Central-Penn National Bank of Philadelphia*****AND WITH THE TITLE*****Provident National Bank***

PURSUANT TO THE ATTACHED CERTIFIED COPIES OF RESOLUTIONS OF THE BOARDS OF DIRECTORS OF THE ABOVE BANKS, AND IN ACCORDANCE WITH THE ATTACHED AGREEMENT, APPLICATION IS HEREBY MADE FOR APPROVAL OF THE PROPOSAL AS REQUIRED BY THE PROVISIONS OF 12 U.S.C., 1828(c), AND 12 U.S.C., 215, OR 12 U.S.C., 215a.

Costs

The applicants have agreed among themselves and it is understood that the cost of any necessary examination or

investigation resulting from this application will be borne by the resulting bank.

Broker or Finders Fee

In connection with the proposed transaction, there has been no payment, nor is there any commitment, agreement, or understanding, oral or written, to pay any consideration, fee or commission, monetary or otherwise, to any shareholder, director or officer of either bank, or to any individual or organization acting as broker, finder, negotiator, or in any similar capacity.

Public Document

It is understood and agreed that this application may be made public in a public hearing or otherwise at the discretion of the Comptroller.

Additional Information

Applicants agree to provide additional information upon request of the Comptroller.

Counsel

In connection with this proposal, the banks have consulted with, relied on, or retained the following legal counsel:

Frederic L. Ballard, Esq.,

(Name of Counsel)

1035 Land Title Building,
Philadelphia, Pa. 19110

(Address)

Ballard, Spahr,

Andrews & Ingersoll

(Firm)

215 - 567-5615

(Area Code — Phone)

Contact Officer

Additional details concerning this proposal may be obtained from

William B. Carr

(Name)

Executive Vice President

(Title)

Provident National Bank
Broad and Chestnut Streets,
Phila, Pa. 19110

(Address)

215 - 564-3000

(Area Code — Phone)

Application for Approval to Merge

Branches of the resulting bank to be established in conjunction with this proposal (including present Headquarters of Charter Bank), for which application is hereby made, are as follows:

| Popular Name | Exact Street Address | City, Town or Village | Penna. County | Date Established | Population of City, Town or Village 19- |
|-----------------|---------------------------|-----------------------|---------------|------------------|---|
| Broad & Walnut | Broad and Walnut Sts. | Philadelphia | Philadelphia | 1950 | 2075000 '65 |
| Arch Street | 1710 Arch St | " | " | 1950*(a) | " |
| 7th Street | 7th & Chestnut Sts. | " | " | 1930* | " |
| Pine Street | 2nd & Pine Sts. | " | " | 1952* | " |
| South Phila. | Broad & Passyunk Ave. | " | " | 1930* | " |
| North Phila. | Broad & Glenwood Sts. | " | " | 1930* | " |
| Wyoming | 5th & Wyoming Ave. | " | " | 1955* | " |
| Stenton | Stenton Ave & Allens Lane | " | " | 1962 | " |
| Woodland | 65th & Woodland Ave. | " | " | 1952* | " |
| Cobbs Creek | 58th & Baltimore Ave. | " | " | 1952* | " |
| Overbrook | 6008 Lansdowne Ave. | " | " | 1952* | " |
| Lancaster | 62nd & Lancaster Ave. | " | " | 1958 | " |
| Twelfth St. | 21 South 12th St. | " | " | 1950* | " |
| 17th & Chestnut | 17th & Chestnut Sts. | " | " | 1928 | " |
| 12th & Chestnut | 12th & Chestnut Sts. | " | " | 1928* | " |
| 4601 Market | 4601 Market Street | " | " | 1926 | " |

* Date acquired in connection with merger or purchase of assets.
(a)—Relocated in 1954

Application for Approval to Merge

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| Popular Name | Exact Street Address | City, Town or Village | Penna. County | Date Established | Population of City, Town or Village 1965 |
|--------------------------|--------------------------|-----------------------|---------------|------------------|--|
| Spring Garden | 6th & Spring Garden Sts. | Philadelphia | Philadelphia | 1948* | 2075000 |
| 3701 N. Broad | 3701 N. Broad Street | " | " | 1954 | " |
| Market St. | Juniper & Market Sts. | " | " | 1957* | " |
| The Mall | 4th & Chestnut Sts. | " | " | 1957* | " |
| W. Phila. | 19 S. 52nd St. | " | " | 1957* | " |
| Germanatown | 150 W. Chelton Ave. | " | " | 1957* | " |
| Logan | Broad & Loudon Sts. | " | " | 1957* | " |
| Junata | Erie & I Sts. | " | " | 1957* | " |
| Food Distribution Center | 330 Packer Avenue | " | " | 1959 b) | " |
| West Oak Lane | 78th & Ogontz Aves. | " | " | 1961 | " |
| Frankford | 4356 Frankford Ave | " | " | 1964* | " |
| Tioga | 3314 Germanatown Ave. | " | " | 1964* | " |
| Cottman | 2200 Cottman Ave. | " | " | 1964* | " |
| Lawncrest | 6705 Rising Sun Ave. | " | " | 1964* | " |
| Somerton | 11830 Bustleton Ave | " | " | 1964* | " |
| N.E. Boulevard | 2401 Welsh Road | " | " | To Open Jan 1966 | " |

(b—Relocated in 1964

* Date acquired in connection with merger or purchase of assets.

Application for Approval to Merge

| Popular Name | Exact Street Address | City, Town or Village | Penna. County | Date Established | Population of City, Town or Village 19- |
|-------------------|---|----------------------------------|---------------|------------------|---|
| Springfield | Balto Pike & West Ave | Springfield | Delaware | 1964 | 28 365 '64 |
| Media | State St & South Ave | Media | " | 1955* | 6 670 " |
| Swarthmore | Chester Rd & Rutgers Ave | Swarthmore | " | 1955* | 6 162 " |
| Springfield | Saxer Ave & Hart Lane | Springfield | " | 1955* | 28 365 " |
| Nether Providence | Balto Pike & Beatty Rd | Wallingford, Nether Prov. Twp | Delaware | 1955* | 11 981 " |
| Lima | Balto Pike & War Admiral La. | Lima, Middletown Twp | Delaware | 1961 | 12 330 " |
| City Line | City Line & Belmont Ave, | Bala Cynwyd | Montgomery | 1958 c) | 66 000 65 |
| King of Prussia | Park Office Bldg, King of Prussia Industrial Park | Lower Merion Twp | " | 1964 | 23 000 " |
| Ambler | 132 E. Butler Pike | Upper Merion Twp | Montgomery | 1956*d) | 6 800 " |
| Collegeville | 364 Main Street | Collegeville | Montgomery | 1960* | 2 610 " |
| Gladwyne | 950 Youngsford Road | Gladwyne, Lower Merion Twp | Montgomery | 1963 | 66 000 " |
| King of Prussia | Store 10—Building "E" King of Prussia Plaza | King of Prussia Upper Merion Twp | " | 1963 | 23 000 " |

* Date acquired in connection with merger or purchase of assets.

(c)—Relocated in 1959

(d)—Relocated in 1963

Application for Approval to Merge

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| Popular Name | Exact Street Address | City, Town or Village | Penna. County | Date Established | Population of City, Town or Village 1965 |
|--------------|-----------------------------------|-------------------------------------|---------------|------------------|--|
| Upper Dublin | 3616 Welsh Road | Willow Grove | Montgomery | 1965 | 16 935 |
| Levittown | Country Club Shopping Ctr. Rte 1 | Upper Dublin Twp | Bucks | 1958* | 28 347 |
| Langhorne | 118 S. Bellevue Ave | Middletown Twp | Bucks | 1958* | 1 984 |
| Newtown | Washington Ave & State St. | Langhorne Newtown | Bucks | 1958* | 2 408 |
| Morrisville | Pennsbury Plaza Shpg Ctr | Morrisville | Bucks | 1962 | 7 978 |
| Street Road | Rte 13, W. Trenton Ave | Feasterville, Lower Southampton Twp | Bucks | 1964 | 17 069 |
| Southampton | Bucks County Mall | Southampton, Upper Southampton Twp | Bucks | 1963 | 11 938 |
| Feasterville | Southampton Shpg Ctr 2nd St. Pike | Feasterville, Lower Southampton Twp | Bucks | 1958* | 17 069 |
| Penndel | Bustleton Pike & Does La | Penndel | Bucks | 1958*d) | 2 309 |
| Quakertown | 133 S. Belleyte Ave | Quakertown | Bucks | 1957* | 6 750 |
| Sellersville | 224-228 W. Broad St | Sellersville | Bucks | 1957* | 2 550 |
| | 209 N. Main St. | | | | |

* Date acquired in connection with merger or purchase of assets.
(d--Relocated in 1963)

*Application for Approval to Merge**Attachments*

Attached and made part of this application are:

1. Schedule I - (statement of assets and liabilities)
2. Schedule II - (analysis of loan and deposit accounts)
3. Schedule III - (bases for this proposal)
4. Schedule IV - (adjustments)
5. Schedule V - (future earnings prospects)
6. Economic Brief
7. Draft copy of Agreement to Merge
8. Certified copy of resolution of Board of Directors.

Attestation

The applicants hereby represent that the information contained in this application is true and complete to the best of their knowledge and belief.

Central-Penn National Bank of Philadelphia

(Charter or Buying Bank)

Harold F. Still, Jr.
President

Provident National Bank

(Other Bank)

William G. Foulke
President

SCHEDULE I.

STATEMENT OF ASSETS AND LIABILITIES
AS OF SEPTEMBER 30, 1965
(Thousands of Dollars)

| ASSETS | Charter or Buying Bank-c) | Other Bank |
|---|---------------------------------|-------------------|
| Cash, balances with other banks, and cash items in process of collection | \$ 64 149 | \$ 124 161 |
| United States Government Obligations, direct and guaranteed | 38 421 | 54 935 |
| Obligations of States and Political Subdivisions | 30 228 | 78 715 |
| Other Bonds, Notes and Debentures (including \$105 securities of Federal agencies and corporations not guaranteed by the United States) | 206 | 303 |
| Corporate Stocks (including \$1 800 stock of Federal Reserve Bank) | 673 | 7 032 |
| Loans and discounts (including \$111 overdrafts) | 226 369 | 412 144 |
| Federal funds sold | 1 000 | None |
| Direct lease financing | None | None |
| Bank premises owned | 5 445 | 11 540 |
| Furniture and fixtures | 875 | |
| Real estate owned other than bank premises | 139 | 3 |
| Advances and investments in corporations or other entities owning bank premises or other real estate | None | None |
| Customers' liability to this bank on acceptances outstanding | 1 185 | 5 169 |
| Other assets | 2 564 | 4 695 |
| TOTAL ASSETS | \$ 370 379 | \$ 698 697 |

Application for Approval to Merge

| LIABILITIES | Charter or Buying Bank-c) | Other Bank |
|--|---------------------------------|-------------------|
| Demand deposits of individuals, partnerships, and corporations | \$ 167 751 | \$ 322 325 |
| Time and savings deposits of indi- viduals, partnerships, and corporations | 91 876 | 149 105 |
| Deposits of U.S. Government (including postal savings) | 12 925 | 15 562 |
| Deposits of States and Political Subdivisions | 20 097 | 57 950 |
| Deposits of banks | 22 806 | 47 261 |
| Certified and officers' checks, etc. | 1 829 | 3 309 |
| TOTAL DEPOSITS | \$ 317 264 | \$ 595 512 |
| (a) Total demand deposits | \$ 207 443 | \$ 409 004 |
| (b) Total time and savings deposits | 109 821 | 186 508 |
| Mortgages or other liens \$ 0 | None | None |
| on bank premises and \$ 0 | None | None |
| on other real estate | | |
| Rediscounts and other liabilities for borrowed money | 3 925 | None |
| Federal funds purchased | 4 000 | None |
| Acceptances executed by or for ac- count of this bank and outstanding | 1 185 | 5 169 |
| Other liabilities | 9 927 | 12 272 |
| TOTAL LIABILITIES | \$ 336 301 | \$ 612 953 |
| VALUATION RESERVES | | |
| Reserve for Loan Losses | 5 929 | 12 427 |
| Valuation Reserves on Securities | None | None |
| Other Valuation Reserves | None | None |
| Total Valuation Reserves | \$ 5 929 | \$ 12 427 |

Application for Approval to Merge

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| | Charter or Buying Bank-c) | Other Bank |
|---|---------------------------------|-------------------|
| CAPITAL ACCOUNTS | | |
| Debentures | None | None |
| Preferred stock—par value per share \$ — | None | None |
| No. shares outstanding <u>None</u> | None | None |
| Common stock—par value per share 10.00-c) <u>\$ 12.00</u> | \$ 6 219 | \$ 14 754 |
| No. shares authorized | 750 000 Shs | 1 229 518 Shs |
| No. shares unissued | 128 545 Shs | None Shs |
| No. shares outstanding | 621 455 Shs | 1 229 518 Shs |
| No. of shareholders | # 5 714 | # 5 823 |
| Surplus | \$ 15 899 | \$ 45 246 |
| Undivided Profits | 6 035 | 13 317 |
| Reserves | None | None |
| TOTAL CAPITAL ACCOUNTS | <u>\$ 28 149</u> | <u>\$ 73 317</u> |
| TOTAL LIABILITIES AND CAPITAL ACCOUNTS | <u>\$ 370 379</u> | <u>\$ 698 697</u> |
| Time certificates of deposit out- standing | 26 491 | 45 192 |

SCHEDULE II:

ANALYSIS OF STATEMENTS OF ASSETS AND LIABILITIES
(Thousands of Dollars)

| LOANS AND DISCOUNTS | Charter or Buying Bank | Other Bank |
|--|------------------------------|---------------|
| Real Estate loans (including all loans secured by real estate, whatever the purpose): | \$ 18 181 | \$ 23 898 |
| (a) Secured by farm land including improvements | 78 | 276 |
| (b) Secured by residential properties (other than farm) and insured by Federal Housing Administration | 39 | 3 785 |
| (c) Secured by residential properties (other than farm) and insured or guaranteed by Veterans' Administration | 29 | 371 |
| (d) Secured by residential properties (other than farm) and not insured or guaranteed by FHA or VA | 1 890 | 9 794 |
| (e) Secured by nonfarm nonresidential properties (e.g., business, industrial, hotels, office buildings, churches) | 16 145 | 9 672 |
| Loans to financial institutions: | 18 820 | 46,470 |
| (a) To domestic commercial and foreign banks | None | 16 213 |
| (b) To other financial institutions (include loans to sales finance, personal finance, insurance and, mortgage companies, factors, mutual savings banks, savings and loan associations, Federal lending agencies, and all other business and personal credit agencies) | 18 820 | 30 257 |
| Loans for purchasing or carrying securities (secured or unsecured): | 923 | 23 252 |
| (a) To brokers and dealers in securities | 5 | 7 039 |
| (b) Other loans for the purpose of purchasing or carrying stocks, bonds, and other securities | 918 | 16 213 |

Application for Approval to Merge

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Charter or
Buying
Bank

Other
Bank

LOANS AND DISCOUNTS (Continued)

| | | |
|---|---------|---------|
| Loans to farmers (include secured and unsecured loans to farmers, except loans secured by real estate above): | \$ 45 | \$ 292 |
| (a) Loans directly guaranteed by the Commodity Credit Corporation and certificates of interest representing ownership thereof | None | None |
| (b) Other loans to farmers (include loans for household and personal expenditures, except loans secured by real estate) | 45 | 292 |
| Commercial and industrial loans (include all loans for commercial and industrial purposes, secured or unsecured, except those secured by real estate above) | 105 923 | 195 651 |
| Loans to individuals for household, family, and other personal expenditures (exclude business loans, loans to farmers, and loans secured by real estate): | 76 222 | 112 037 |
| (a) To purchase private passenger automobiles on installment basis (include purchased paper) | 50 845 | 59 805 |
| (b) To purchase other retail consumer goods on installment basis (include purchased paper) | 3 652 | 622 |
| (c) Installment loans to repair and modernize residential property | 1 625 | 839 |
| (d) Other installment loans for household, family, and other personal expenditures | 7 372 | 18 471 |
| (e) Single-payment loans for household, family, and other personal expenditures | 12 728 | 32 300 |
| All other loans (incl. overdrafts). (To churches, hospitals, charitable or educational institution, etc, not secured by real estate) | 6 255 | 10 544 |
| Loans and Discounts, Gross | 226 369 | 412 144 |
| Less reserve for bad debts, unallocated chargeoffs, and other valuation reserves | 5 929 | 12 427 |
| Loans and Discounts, Net | 220 440 | 399 717 |

Application for Approval to Merge

| | <i>Charter or Buying Bank</i> | <i>Other Bank</i> |
|--|---------------------------------------|-----------------------|
| DEMAND DEPOSITS | | |
| Deposits of individuals, partnerships, and corporations | \$167 731 | \$322 325 |
| Deposits of United States Government | 12 925 | 15 507 |
| Deposits of States and political subdivisions | 4 182 | 27 311 |
| Deposits of banks | 20 776 | 40 552 |
| Certified and officers' checks, travelers' checks, letters of credit, etc. | 1 829 | 3 309 |

TIME AND SAVINGS DEPOSITS

| | | |
|---|--------|---------|
| Deposits of individuals, partnerships, and corporations | 91 876 | 149 105 |
| Deposits of United States Government <u>\$ None</u> , postal savings deposits <u>\$ 55</u> | None | 55 |
| Deposits of States and political subdivisions | 15 915 | 30 639 |
| Deposits of Banks | 2 030 | 6 709 |
| Other Time Deposits | None | None |

SCHEDULE III. **BASIS FOR PROPOSAL**

| Source of figures | Charter or | | Other Bank | | Proposed for |
|---------------------|--------------------|--------------------|--------------------|---------------------|----------------|
| | Buying Bank | Corporate | Books | September 30, 1965 | Resulting Bank |
| Date | September 30, 1965 | September 30, 1965 | September 30, 1965 | September 30, 1965 | |
| Total Deposits (1) | \$317,264,000 | \$595,512,000 | \$412,144,000 | \$911,776,000 (2) | |
| Total Loans | \$226,369,000 | \$5,445,000 | \$370,379,000 | \$638,513,000 | |
| Total Fixed Assets | \$621,455 | \$10 | \$12 | \$16,985,000 | |
| Total Resources | \$54,875 | \$77.75 | \$20,968,766 | \$1,068,076,000 (2) | |
| Number of Shares | 621,455 | 10 | 12 | 2,260,813 | |
| Par Value Per Share | \$ | \$ | \$ | \$ | |
| Last Sale Price and | \$ | \$ | \$ | \$ | |
| Dates (3) | \$ | \$ | \$ | \$ | |
| Capital | \$ 6,214,550 | \$ 14,754,216 | \$ 20,968,766 | \$ 22,608,130 | |
| Surplus | 15,899,450 | 45,245,784 | 61,145,234 | 62,391,870 | |
| Undivided Profits | 6,035,274 | 13,317,361 | 19,352,635 | 16,466,635 | |
| Res. for Conting. | None | None | None | None | |
| Total | \$ 28,149,274 | \$ 73,317,361 | \$ 101,466,635 | \$ 101,466,635 | |

Application for Approval to Merge

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Application for Approval to Merge

Proposed for
Resulting
BankCombined
100%Other Bank
72.26%Charter or
Buying Bank
27.74%

% of Total

Net Adjustments:
(Schedule attached)

\$ 14,307,225

\$ 11,919,124

\$ 2,388,101

Estimated fair value of
assets, over and above
liability to creditors,
contributed by each
bank

\$ 115,773,860

\$ 85,236,485

\$ 30,537,375

% of Total

100%

73.62%

26.38%

(1) Excludes Reciprocal Deposits of Correspondent Banks.

(2) Excludes \$1,000,000 Inter-Company Accounts.

(3) Mean Prices—11/4/65

* * * * *

Application for Approval to Merge

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| | Charter or Buying Bank | Other Bank | Combined |
|------------------------------|------------------------------|---------------|--------------|
| Proposed allotment of stock: | | | |
| Number of Shares: | 621,455 | 1,639,358 | 2,260,813 |
| Aggregate Par Value | \$6,214,550 | \$16,393,580 | \$22,608,130 |
| % of Total | 27.49% | 72.51% | 100% |

| | | | |
|--|--------------|------------|----------|
| Book Value Per Share | \$ 45.30 | \$ 59.63 | \$ 44.88 |
| Aggregate Book Value Gain or (Loss) | \$ (258,003) | \$ 258,003 | |
| Per Share Book Value Gain or (Loss) | \$ (.42) | \$.21 | |

| | | | |
|--|-------------|---------------|----------|
| Fair Value per Share | \$ 49.14 | \$ 69.33 | \$ 51.21 |
| Aggregate Fair Value Gain or (Loss) | \$1,286,683 | \$(1,286,683) | |
| Per Share Fair Value Gain or (Loss) | \$ 2.07 | \$ (1.05) | |

| | | | |
|--|--------------------------|----------------------|-------------------------|
| Market Value per Share | \$ 54.875 | \$ 77.75 | \$ 58.3125 Estimated |
| Aggregate Market Value gain or (Loss) | \$2,136,252 Estimated | \$ None Estimated | |
| Market Value per Share gain or (Loss) | \$ 3.44 Estimated | \$ None Estimated | |

Application for Approval to Merge

SCHEDULE IV.

Schedule showing adjustments to book values in determining the estimated fair value of excess assets, over and above liability to creditors, of each consolidating, merging or selling bank, in support of the proposed allotment of stock of the consolidated bank, receiving association or buying bank to the respective groups of shareholders.

| <i>Adjustments</i> | <i>Charter or Buying Bank</i> | <i>Other Bank</i> | <i>Combined</i> |
|---|---------------------------------------|-----------------------|---------------------|
| Additions: | | | |
| Reserve for Bad Debts -a) | \$3 083 057 | \$ 6 462 054 | \$ 9 545 111 |
| Other Free Reserves (detail) | | | |
| Bond Appreciation -b) | | 5 457 070 | 5 457 070 |
| Banking House | | | |
| Furn. & Fixtures | | | |
| Other Real Estate | | | |
| Good Will (indicate basis) | | | |
| Total Additions | <u>\$3 083 057</u> | <u>\$11 919 124</u> | <u>\$15 002 181</u> |
| Deductions: | | | |
| Accrued Taxes | | | |
| Accrued Interest | | | |
| Int. Coll—not earned | | | |
| Provision for dividends | | | |
| Bond Depreciation -c) | 694 956 | | 694 956 |
| Depr. on Bank House | | | |
| Depr. on Furn. & Fix. | | | |
| Est. Losses—Loans | | | |
| Est. Losses—O.R.E. | | | |
| Est. Losses—Other | | | |
| Total Deductions | <u>694 956</u> | <u></u> | <u>694 956</u> |
| Net Adjustments | <u>\$2 388 101</u> | <u>\$11 919 124</u> | <u>\$14 307 225</u> |
| Nonconforming Assets | None | None* | None* |
| Disposition to be made of nonconforming assets: | | | |

(a- After 48% tax

(b- After 25% tax

(c- After 48% tax credit

* Reference is made to letter of Provident Tradesmens Bank and Trust Company dated September 4, 1964, and the reply of the Comptroller of the Currency dated September 8, 1964, requesting and granting, respectively, authorization to Provident National Bank to retain certain equity securities then and now owned by Provident.

SCHEDULE V.

FUTURE EARNINGS PROSPECTS
(Thousands of Dollars)

The following statements should include actual current operating income and expense for the participating banks for the last full calendar year. The estimate for the Resulting Bank should reflect any anticipated economy in operations or any reduction or increase in income or expense which is expected to result from the proposed transaction.

| | Charter or Buying Bank Year 1964 | Other Bank Year 1964 | 1966 Estimate First Twelve Months' Operation of Resulting Bank |
|--|--|-------------------------------|--|
| Current operating income: | | | |
| Interest and Dividends on Securities | 2 335 | 4 938 | 7 636 |
| Interest and Discount on Loans | 11 807 | 19 183 | 36 136 |
| Commissions, fees, and collection, exchange, and service charges | 1 638 | 6 485 | 9 603 |
| Other current operating income | 104 | 271 | 415 |
| GROSS CURRENT OPERATING INCOME | <u>15 884</u> | <u>30 877</u> | <u>53 790</u> |
| Current operating expense: | | | |
| Salaries, wages, and fees | 4 369 | 8 690 | 14 304 |
| Interest on time and saving deposits | 3 391 | 4 747 | 12 542 |
| Interest and discount on borrowings | 79 | 232 | 524 |
| Taxes (other than on income) | 511 | 1 201 | 1 983 |
| Recurring depreciation on banking house, furniture and fixtures | 381 | 409 | 847 |
| Other current operating expenses | 2 940 | 5 248 | 8 740 |
| TOTAL CURRENT OPERATING EXPENSE | <u>11 671</u> | <u>20 527</u> | <u>38 940</u> |
| NET CURRENT OPERATING INCOME | <u>4 213</u> | <u>10 350</u> | <u>14 850</u> |

*Application for Approval to Merge***NET OPERATING INCOME PREVIOUS
FIVE CALENDAR YEARS**

| <i>Year</i> | <i>Charter Bank</i> | <i>Merging or Con- solidating Bank</i> |
|-------------|---------------------|--|
| 1964 | 4 213 | 10 350 |
| 1963 | 4 254 | 10 004 |
| 1962 | 4 206 | 9 966 |
| 1961 | 4 190 | 9 455 |
| 1960 | 4 569 | 9 520 |
| Average | <u>4 286</u> | <u>9 859</u> |

**COMPTROLLER OF THE CURRENCY
WASHINGTON, D. C.**

**Application of
PROVIDENT NATIONAL BANK
and
CENTRAL-PENN NATIONAL BANK
For Approval to Merge**

Economic Brief

COMPTROLLER OF THE CURRENCY

WASHINGTON, D. C.

APPLICATION OF

PROVIDENT NATIONAL BANK

AND

CENTRAL-PENN NATIONAL BANK

FOR APPROVAL TO MERGE

ECONOMIC BRIEF

INTRODUCTION

This brief is in support of an application for approval to merge Provident National Bank ("Provident") and Central-Penn National Bank ("Central-Penn"), both headquartered in Philadelphia. Provident is the fifth largest Philadelphia bank, with IPC deposits¹ of \$471,430,000 and loans (net) of \$399,717,000 as of September 30, 1965. Central-Penn is the seventh largest,² with IPC deposits of \$259,607,000 and loans (net) of \$220,440,000 on the same date.

The resulting bank is expected to rank fourth in Philadelphia, following First Pennsylvania Banking and Trust Company, Philadelphia National Bank, and Girard Trust Bank. Its pro-forma combined IPC deposits and loans (net) would have equalled 12.46% and 12.84% respectively of the totals reported for all commercial banks in the Philadelphia Standard Metropolitan Statistical Area as of June 30, 1965, the latest date for which complete figures are available.

Reasons for the Merger

1. The resulting bank, by reason of its greater resources, human as well as financial, will be able to take a more impor-

1. Deposits of individuals, partnerships and corporations.

2. Continental Bank and Trust Company is here included as a Philadelphia bank, although its head office is in Montgomery County. It was formed in July 1965 through the merger of Montgomery Bank and Trust Company and Broad Street Trust Company, a substantially larger bank which was headquartered in Philadelphia.

tant part in Philadelphia's efforts to revitalize its economy, particularly by attracting and retaining job-creating enterprises and by expanding export and import trade through the Port of Philadelphia, upon which much business and many jobs depend. These efforts lean heavily on the activity and influence of the commercial banks, primarily the larger banks, which also benefit more directly from them.

2. The remarkably complementary branch systems of the two banks, when joined by the merger, will correct the present deficiencies in each system and will provide an area-wide branch system which will be able to compete for personal and small business deposits and other retail banking business upon more equal terms with the existing area-wide systems of five other banks: First Pennsylvania, Philadelphia National, Girard, Fidelity-Philadelphia Trust Company, and Continental Bank and Trust Company.³

3. The merger will make available to Central-Penn's present customers and to the local areas served by its neighborhood branches all of the services of Provident, including one of the nation's outstanding trust departments, an aggressive international division, and a more extensive and experienced construction loan department. This will assist in retaining and attracting customers and deposits. *

4. Central-Penn is acutely in need of more space for its head office and accounting operations and has been considering a building program, which would be costly and would involve a very substantial long term commitment or investment. Provident has recently renovated its head office and is just completing a new operations building at a total aggregate cost of about eight million dollars. Its renovated head office and new operations building will have adequate space to accommodate the needs of the merged bank, and thus will

3. In Pennsylvania, branching is limited to the headquarters county and contiguous counties. This means that the first four banks named (and also Provident and Central-Penn) are limited in branching to Philadelphia, Bucks, Delaware and Montgomery Counties. Continental, because of its Montgomery County headquarters, can branch into the same four counties *plus* Chester, Berks and Lehigh.

provide a solution for Central-Penn's problems in this respect.

5. Central-Penn needs additional capital and has, in fact, been giving serious consideration to raising such capital by means of a debenture issue or otherwise. On the other hand, Provident is one of the most strongly capitalized banks in the United States.⁴ The combined capitalization would be more than adequate for the merged institution.

6. The resulting institution will be in a position to compete more effectively with larger banks in New York and elsewhere for wholesale banking business. For example, it should be able to compete more successfully in the national market for negotiable certificates of deposit, which have become a major, and probably permanent, part of the deposit structure of commercial banking.⁵ The larger corporations, which are the principal customers for such certificates, have tended to concentrate their business with larger banks.⁶ The same considerations apply to the more recent development of short term note borrowing.

4. Of the 50 banks throughout the United States covered in the Bank Stock Quarterly of M. A. Schapiro & Co., Inc., Provident had the seventh highest ratio of capital to deposits at June 30, 1965.

5. During the past five years, deposits of Weekly Reporting Member Banks represented by negotiable certificates have increased from a nominal amount to 16.4 billion dollars, or 9.4% of total deposits as of November 10, 1965.

6. The November 1965 issue of the Monthly Review of the Federal Reserve Bank of New York stated: "The negotiable time certificate has greatly contributed to a broadening of the competition for bank deposits from the local and regional to the nationwide level. Furthermore, the competition for profitable loans and investments has also been broadened, since the C/D market facilitates the search for the needed resources once the lending opportunity arises. The large money market banks have turned out to be strong competitors, particularly because a C/D possesses greater marketability if it is issued by a bank of national repute. This criterion is readily met by the large New York banks, which are therefore able to obtain deposits by issuing C/D's at somewhat lower interest rates than smaller and less well-known banks. The competitive strength of New York 'prime banks' is reflected in the absolute and relative growth of their outstanding C/D's."

7. Earning power of the resulting bank will be greater by reason of improved ability to retain and attract business and by operating economies realizable through better utilization of personnel and office equipment and savings in occupancy expense.

Some further comment on the branch office problem is appropriate:

Central-Penn and Provident are each without branch office representation in certain large and important sections of the metropolitan area. This lack places each of them at a serious competitive disadvantage in the retention and solicitation of retail banking business. The merged bank will have much more complete coverage.

It is well recognized that convenience of banking office location is by far the principal determinant in the choice of a retail banking connection and in the establishment of many business banking relationships. In the Philadelphia metropolitan area, the extraordinary mobility of the residential population⁷ and the unusual decentralization of industry and trade make an area-wide system of retail branch offices a competitive necessity.

The importance of a balanced branch system is well illustrated by Provident's high deposit account turnover rate, in which the moving of customers to areas not served by Provident branches is a dominant factor.⁸ Provident's vulnerability in this respect is an important contributor to the decline in its share of the total deposits of all Philadelphia Clearing House banks from 12.2% on December 31, 1957 to 10.4% currently (both figures adjusted for mergers). During the same period, Central-Penn's share has also declined, probably for the same reason.

7. Census figures indicate that a total of 1,300,000 people moved from one place to another within the metropolitan area between 1955 and 1960.

8. In the first ten months of 1965, Provident's ratio of regular and special checking and savings accounts closed during the period to the number of such accounts at the beginning of the period was at an annual rate of 14.5%.

These branch office deficiencies will be remedied by merger of the two branch systems because of their uniquely complementary nature.⁹ The establishment of *de novo* branches now would be a long and extremely costly alternative and would result in an overbanked situation in many instances.

Effect on Competition

The merger will extend and intensify—rather than lessen—competition and will not tend to create a monopoly in commercial banking. Any discussion of competition, however, would be unrealistic if it failed to recognize that commercial banks compete not only with other similar banks but with mutual savings banks, savings and loan associations, finance and small loan companies, credit unions, insurance companies and mutual funds. All of these types of competitors are strongly represented in the Philadelphia metropolitan area as set forth in section D of this brief.

Central-Penn and Provident are complementary—rather than competitive—in the retail banking services provided through their neighborhood branch offices, as shown in Exhibits 1 through 4 to this brief. In Delaware County, Provident is rather well represented with five offices, while Central-Penn has but one. On the other hand, Central-Penn has good coverage in lower Bucks County with eight branches widely separated from Provident's two offices in upper Bucks County. In Montgomery County, each bank has two offices, the location of which makes them noncompetitive even though the air distance between the two offices in King of Prussia is relatively short.

Provident and Central-Penn encounter branch office competition, not from each other, but from the largest Philadelphia banks. Every one of Provident's 12 branch offices outside the City of Philadelphia has a branch office of a billion

9. For this reason, bankers not connected with either institution have long suggested that the most logical bank merger in Philadelphia would be Provident and Central-Penn.

dollar bank¹⁰ nearer than the closest branch of Central-Penn. Within the City limits, 18 of Provident's 19 branches have an office of one or more billion dollar banks closer than the nearest Central-Penn branch. The exception is at 12th and Chestnut Streets, across the street from Central-Penn's office at 21 South 12th Street in densely banked center city.

The banks are also complementary—rather than competitive—in many of the services they provide. Provident has one of the larger trust departments in the Philadelphia area; Central-Penn's is quite small by comparison. Provident has a well-established international division; Central-Penn has just entered this field. Provident has developed a more specialized and far reaching construction loan department than Central-Penn. Central-Penn has specialized in local business loans and has built up over the years a strong and experienced commercial loan department. The banks use different computer systems and offer different accounting and data processing services which would provide customers of both banks with a highly versatile package of services.

Not only is present competition between the banks relatively small, but the potentiality of future competition is also small. As pointed out above, the long delay and high cost of *de novo* branching and the overbanked situation that would result in many communities would undoubtedly deter both banks from seeking to develop an area-wide system of offices by that method. Also, considering the expense, personnel and time required to establish a full-scale trust or international department, Central-Penn would be unlikely to become a fully effective competitor in those fields for many years.

From the point of view of customers—as distinguished from competitors—the effects of the merger will be similar to those described by the Federal Reserve Board in its decision approving the merger of two other Philadelphia banks, Fidelity-Philadelphia and Liberty Real Estate Bank and Trust Company.

The effect of the merger on larger customers will be clearly beneficial. The competitive climate in Philadelphia

10. First Pennsylvania, Philadelphia National or Girard.

will be stimulated by the expanded resources and services of a fourth billion dollar bank. The range of choices available to customers who need services which can only or best be rendered by a large bank will be increased.

At the same time, the ten banks with resources of \$100 million and over that will remain in the metropolitan area will assure a satisfactory range of choices to the medium size customer who cannot conveniently rely on banks outside the area.

For the small consumer—the jobholder, and homeowner—who is limited in practice to handling affairs in his own locality, the merged bank will provide expanded services, particularly in trusts and estates. There is little or no overlapping in the service areas of Provident and Central-Penn neighborhood branches—and in all cases the offices of other banks provide a wide range of choice.

Provident and Central-Penn do not lack opportunities to put their money to work creatively and profitably. They do need increased deposits to support their lending operations. The merger will put them in a better position to attract deposits in the two currently most productive sources of funds—the retail market and the market for negotiable certificates of deposit.

A. FINANCIAL HISTORY AND CONDITION

Provident

Provident was incorporated as Provident Trust Company of Philadelphia on February 14, 1922,¹¹ to take over the banking, trust and other fiduciary business of Provident Life and Trust Company which had been organized on March 22, 1865. For many years the major emphasis of Provident Trust Company was upon fiduciary services, particularly personal trusts. It called itself "America's Pioneer Life Insurance Trustee."

Provident has consistently endeavored to serve customers of moderate means as well as those with substantial

11. It became a National Bank on November 12, 1964.

estates. At September 30, 1965, it had 12,321 personal trust accounts, more than any other bank in Philadelphia. Its total personal trust assets were \$2,195,000,000 at market value on the same date.

On April 26, 1957 Provident Trust Company, which then had deposits of \$188,455,000 and loans (net) of \$101,777,000 merged with Tradesmens Bank and Trust Company, with deposits of \$243,195,000 and loans (net) of \$134,969,000. This merger, like the proposed merger with Central-Penn, was essentially complementary. Tradesmens had a smaller and less active trust department, but it was well established in the commercial and construction loan fields, and it had one of the oldest foreign departments in Philadelphia. These were areas in which Provident was not competitive or was a relative newcomer.¹²

Prior to the merger with Tradesmens, Provident Trust Company had not been aggressive in the establishment of branches in the three adjacent suburban counties (Delaware, Montgomery and Bucks), into which Philadelphia banks are permitted to branch. Through earlier merger or purchase, it had acquired four offices in Delaware County in 1955 and one office in Montgomery County in 1956. Tradesmens had no branches in the suburban counties.

Two offices in upper Bucks County were acquired by purchase of assets in December, 1957, and another branch in Montgomery County resulted from a 1960 merger. Since 1957 Provident has opened one *de novo* branch in Delaware County, three in Montgomery County, and two in the City of Philadelphia (in addition to the twelve branches already maintained there).

During the past five years, Provident has merged two small banks: December 30, 1960, the Collegeville National Bank with deposits of \$4,811,000 and loans (net) of

12. Provident's other mergers and purchases were also noncompetitive in nature, specifically Northern Trust Co., a Philadelphia neighborhood unit bank in 1948, First National Bank of Delaware County in 1955, Ambler Trust Co. in 1956, Merchants National Bank of Quakertown in 1957, Collegeville National Bank in 1960 and Second National Bank of Philadelphia in 1964.

\$3,268,000, and on August 17, 1964, Second National Bank of Philadelphia with deposits of \$42,196,000 and loans (net) of \$24,975,000. Provident's primary reason for both mergers was to obtain retail coverage in areas in which it previously had no branch representation. The Collegeville merger added a modern office at 364 Main Street in that Montgomery County community. The Second National merger added five offices in the northeast section of Philadelphia, specifically, at 4356 Frankford Avenue, 2200 Cottman Avenue, 6705 Rising Sun Avenue, 11830 Bustleton Avenue and 3314 Germantown Avenue.

From the point of view of the Collegeville National Bank the merger solved a critical management and personnel morale problem which had culminated in the resignations of the Bank's two senior active officers. It also enabled the Bank to offer trust services and certain other banking services for the first time.

Second National Bank sought a merger because of its increasing difficulty in meeting demands for expanded banking and trust services; its relatively unsatisfactory earnings performance and unfavorable prospects for improvement; and its inadequate provision for management succession. The merger resulted in the anticipated improvement in service.¹³

13. The effect of the merger in this regard is described in the following excerpts from a memorandum of Kenneth J. Barber, Senior Vice President and Cashier of the Second National Bank at the time of the merger and now a Vice President of Provident:

"We faced a number of situations in which our customers had grown, and their credit requirements exceeded the legal lending limit of Second National Bank. These customers are in the category of small businesses, but their credit needs exceeded the \$300,000 lending limit of Second National Bank.

In addition, several of our accounts have required the financing of new plants, and it was contrary to the policy of Second National Bank to extend mortgage loans secured by a lien on industrial or commercial real estate. We have, therefore, been able to assist several of our accounts in this area, enabling us to meet the competition of both the larger banks, and also the Frankford Trust Company, which specializes in real estate financing.

We have also been able to assist some of our customers in handling their business in export and import trade. Previously this type of transaction was handled through our correspondent, and now we

While certain Second National accounts were lost on the ground that the bank was no longer a local institution, the deposits of the former Second National offices have increased substantially, despite the slightly higher service charges of Provident. The results have been similar at Collegeville.

Central-Penn

/ The name of Central-Penn National Bank comes from the merger in 1930 of Central National and Penn National Banks. From the beginning, these two old institutions were known primarily as commercial banks and this characteristic has been continued by Central-Penn.

Penn was organized in February 1828 by the merchants and traders living and working in Penn Township and the name of the bank was the Bank of Penn Township until its conversion into a national institution in 1864.

Central National Bank was organized in December 1864 largely in response to the growing needs of industrial firms, including textiles, pipe and tube manufacturers, steel importers and selling agents, producers of steam engines and metal castings, locomotive builders and coal operators.

When these two banks merged in 1930, they complemented each other in creating a unit of larger resources to serve industry, trade and commerce.

Its scope of operation was enlarged in 1950 when it purchased the Charter Bank of Philadelphia, formerly the Morris Plan Bank, an institution of about \$6,000,000 in assets specializing in the consumer credit field. Today, Central-Penn's loans in this field exceed \$64,000,000.

The extent of Central-Penn's activities in the field of instalment loans to individuals and term loans to smaller

are able to refer these matters to the International Division, which is more satisfactory, and also builds a closer relationship with our account.

I believe the Trust Division of Provident National Bank is providing a far better, and more complete service to our customers than was available in the past through Second National Bank. Many people of substantial means hesitated to name Second National Bank as executor or trustee under their will, because of the size of the bank. We have been able to secure the appointment of the bank as executor, and trustee in a number of cases involving rather substantial estates."

business units was broadened by the acquisition of five smaller banks in Philadelphia and Bucks County between 1952 and 1958. This acquisition gave Central-Penn sixteen banking offices, including the head office at Broad and Walnut Streets, Philadelphia. It was not until 1958 that Central-Penn acquired its first suburban office. Since that year a total of eight *de novo* branches have been established: two in Montgomery County, three in Lower Bucks County, two in Philadelphia, and one in Delaware County, giving a total of twenty-four offices. Central-Penn has had no mergers or acquisitions in the past five years.

This historical background shows how Central-Penn effectively complements Provident by its strong position in the commercial lending field and in the field of consumer credit.

B. MANAGEMENT

Below is a list of the principal executive officers of the merged bank showing their banking experience and qualifications, their major business or professional occupations, their other banking and business affiliations, their ages, their titles, and the par value of stock to be owned in the resulting bank. Following such list is a list of all the directors of Provident and Central-Penn, showing their principal occupations and the par value of stock to be owned in the resulting bank. Under the Agreement of Merger, Provident is to designate 16 directors for the resulting bank from among its directors, Central-Penn is to designate 9 from among its directors. The persons so designated will be named in the proxy statements of the two banks.

The management of the merged bank will have a combination of broad experience and individual skills at all levels which should enable the merged bank to accomplish more than either bank could accomplish on its own. With the steady trend toward specialized services which characterizes modern banking, larger pools of management personnel are essential. Small organizations, no matter how able, cannot provide the depth of expertise and flexibility that is expected by the managements of dynamic, growing businesses.

PRINCIPAL EXECUTIVE OFFICERS OF THE RESULTING BANK

| <i>Name, Title and Present Directorships</i> | <i>Age</i> | <i>Years in Banking</i> | <i>Par Value of Stock to be Owned in Resulting Bank</i> |
|---|------------|---------------------------------|---|
| William G. Foulke Chairman | 53 | 25 | \$ 3,533.33 |
| Provident National Bank | | | |
| Saving Fund Society of Germantown | | | |
| P. H. Glatfelter Company | | | |
| Bulletin Company—Voting Trustee | | | |
| Alan Wood Steel Company—Voting Trustee | | | |
| East Tenn. & West N. C. Transportation Company and Subsidiaries | | | |
| Pardee & Curtin Lumber Company | | | |
| Blackwood Land Company | | | |
| Calvin Corporation | | | |
| Pardee Company | | | |
| Pardee Land Company | | | |
| Ario Corporation | | | |
| Vanity Fair Mills, Inc. | | | |
| Provident Mutual Life Insurance of Phila. | | | |
| Building Operation Holding Company | | | |
| Provident International Corp. | | | |
| Reliance Insurance Co. | | | |
| Harold F. Still, Jr. President | 42 | 19 | 2,200.00 |
| Central-Penn National Bank | | | |
| The Fidelity Mutual Life Insurance Company | | | |
| James M. Large Vice Chairman | 61 | 37 | 4,933.33 |
| Provident National Bank | | | |
| Fidelity Mutual Life Insurance Co. | | | |
| Commonwealth Land Title Insurance Co. | | | |
| Horn & Hardart Baking Company | | | |
| Horn & Hardart Company of New York | | | |
| South Chester Tube Company | | | |
| South Chester Corporation | | | |
| Chester Tidewater Terminal, Inc. | | | |
| Dodge Steel Company | | | |

| <i>Name, Title and Present Directorships</i> | <i>Age</i> | <i>Years in Banking</i> | <i>Par Value of Stock to be Owned in Resulting Bank</i> |
|--|------------|---------------------------------|---|
| Lion Fastener Company, Inc. Philadelphia Saving Fund Society Pennbrook Milk Company (member of Advisory Bd.) Amtek Corporation Building Operation Holding Company Provident International Corp. The Electric Storage Battery Company Pennsylvania Ins. Co. | | | |
| Benjamin F. Sawin Chairman of the Executive Committee | 63 | 45 | \$ 2,973.33 |
| Provident National Bank Alan Wood Steel Company Philadelphia Life Insurance Co. Commonwealth Land Title Insurance Co. Building Operation Holding Company Keystone Philadelphia Automobile Club Federal Reserve Bank of Philadelphia Provident International Corp. | | | |
| William B. Carr Executive Vice President | 49 | 14 | 866.67 |
| Provident International Corp. Stock Clearing Corporation of Philadelphia Financial Executives Institute | | | |
| Roger S. Hillas Executive Vice President | 38 | 14 | 1,333.33 |
| Cotiga Development Co. E. M. Hanson & Co. Soabar Company Wm. Penn Charter School (Corp.) Huntingdon Industries, Inc. Sutro-Wheatley, Inc. P. H. Glatfelter Co. | | | |
| Frank T. Howard Senior Vice President | 53 | 25 | 533.33 |
| Lawrence J. McEvoy Vice President and Cashier Independent Manufacturing Co. | 62 | 33 | 5,020.00 |

PRESENT DIRECTORS
OF
PROVIDENT NATIONAL BANK

| <i>Name</i> | <i>Principal Occupation</i> | <i>Par Value of Stock to be Owned in Resulting Bank</i> |
|-----------------------|--|---|
| F. Bruce Baldwin, Jr. | President, Abbotts Dairies. | \$ 2,306.67 |
| David C. Bevan | Chairman of the Finance Committee The Pennsylvania Railroad Company | 1,120.00 |
| Morris Cheston | Ballard, Spahr, Andrews & Ingersoll, Attorneys | 1,333.33 |
| Joel Cluster | Chairman of the Board Luria Brothers & Co., Inc. | 4,000.00 |
| Edward J. Dwyer | President, The Electric Storage Battery Company | 1,333.33 |
| William G. Foulke | President | 3,533.33 |
| W. R. Gerstnecker | Treasurer, The Pennsylvania Railroad Company | 1,133.33 |
| Aaron W. Hardwick | Director, Warner Company | 110,600.00 |
| Gordon B. Hattersley | Vice President and Director Sears, Roebuck and Co., Retired | 1,120.00 |
| Birkett Howarth | Secretary-Treasurer, Reading Company | 1,666.67 |
| James M. Large | Chairman of the Board | 4,933.33 |
| M. Albert Linton | Director, Provident Mutual Life Insurance Company of Philadelphia | 4,000.00 |

| Name | Principal Occupation | Par Value of Stock to be Owned in Resulting Bank |
|-------------------------|--|--|
| Allan G. Mitchell | Vice President-Finance and Accounting, Philadelphia Electric Company | 1,333.33 |
| William R. K. Mitchell | Director, Provident Mutual Life Insurance Company of Philadelphia | 4,133.33 |
| Henry L. Moffett | President, Keystone-Philadelphia Automobile Club | 1,120.00 |
| DeLong H. Monahan | Financial Vice President, Provident Mutual Life Insurance Company of Philadelphia | 1,333.33 |
| W. E. Mullestein | Vice President and General Manager, Lukens Steel Co. | 1,120.00 |
| Thomas L. Prendergast | Vice President and Treasurer, John Wanamaker, Philadelphia | 6,306.67 |
| Benjamin F. Sawin | Vice Chairman of the Board and Chairman of the Executive Committee | 2,973.33 |
| Claude C. Smith | Duane, Morris & Heckscher, Attorneys | 22,066.67 |
| Herbert P. Stellwagen | Director, Insurance Company of North America | 1,333.33 |
| J. Tyson Stokes | Morgan, Lewis & Bockius, Attorneys | 1,666.67 |
| H. Chandlee Turner, Jr. | Chairman, Turner Construction Company | 1,333.33 |
| George D. Widener | Trustee | 1,546.67 |
| Howard A. Wolf | Partner, Wolf Brothers | 8,053.33 |

PRESENT DIRECTORS
OF
CENTRAL-PENN NATIONAL BANK

| <i>Name</i> | <i>Principal Occupation</i> | <i>Par Value of Stock to be Owned in Resulting Bank</i> |
|----------------------------|--|---|
| George E. Bartol, Jr. | Chairman, Hunt Manufacturing Co. | \$ 1,560.00 |
| H. Lloyd Beyer | President, Edgcomb Steel Company | 1,000.00 |
| J. Frank Cox | Vice President (retired) The Bell Telephone Company of Pennsylvania | 2,600.00 |
| Paul R. Dew | Executive Vice President, Abbotts Dairies Division, Fairmont Foods Company | 1,000.00 |
| John A. Diemand | Chairman of Executive Committee, Insurance Co. of North America | 1,150.00 |
| Joseph L. Eastwick | Chairman, James Lees and Sons Company | 3,460.00 |
| Joseph M. First | Vice President and General Counsel, Triangle Publications, Inc. | 1,000.00 |
| Samuel B. Fortenbaugh, Jr. | President, Alamo Industries, Inc., Senior Partner, Clark, Ladner, Fortenbaugh & Young | 53,527.00 |

| <i>Name</i> | <i>Principal Occupation</i> | <i>Par Value of Stock to be Owned in Resulting Bank</i> |
|------------------------|---|---|
| William W. Hagerty | President, Drexel Institute of Technology | \$ 1,000.00 |
| John H. W. Ingersoll | Director, Muskegee Company | 14,920.00 |
| J. Benton Jones | Vice President, Pennsylvania Railroad Co. | 1,160.00 |
| Paul R. Kaiser | President, Tasty Baking Co. | 1,740.00 |
| Lloyd E. Long | President, Merchants' Warehouse Company | 1,620.00 |
| Charles E. Mather, II | President, Mather & Co. | 1,160.00 |
| Earl K. Mueller | Vice Chairman (retired) | 2,900.00 |
| H. Merle Mulloy | Vice President and General Counsel, Reading Company | 1,000.00 |
| H. Nedwell Ramsey | President (retired), Philadelphia Electric Co. | 2,150.00 |
| Harry G. Schad | Vice President, The Atlantic Refining Co. | 1,160.00 |
| Casimir A. Sienkiewicz | Chairman | 9,220.00 |
| Harold F. Still, Jr. | President | 2,200.00 |
| Robert W. Watson | General Manager, Philadelphia Catalog Order Division, Sears, Roebuck and Company | 1,000.00 |
| E. Richard Werner | President, Western Saving Fund Society | 1,350.00 |
| Charles S. Walton, Jr. | President, Charles S. Walton & Co., Inc. | 1,730.00 |

C. CONVENIENCE AND NEEDS OF COMMUNITY

The Philadelphia Standard Metropolitan Statistical Area (SMSA), as defined by the United States Bureau of Census, includes the City of Philadelphia, the Pennsylvania Counties of Bucks, Chester, Delaware and Montgomery, and the New Jersey Counties of Burlington, Camden and Gloucester. Four bridges spanning the Delaware River have accomplished the complete economic, social and cultural integration of the Pennsylvania and New Jersey communities. In the calendar year 1964 over 76 $\frac{1}{4}$ million vehicle trips were made across these bridges.

With a population of more than 4.3 million and manufacturing employment exceeding half a million, the area is the fourth largest metropolitan complex in the nation, and is second only to New York on the eastern seaboard. More than 25 million people live within a 100-mile radius of the City of Philadelphia. The Port of Philadelphia, extending from Trenton, New Jersey, on the north to Wilmington, Delaware, on the south, serves 13 states in which one-third of the nation's population lives and works.

Industry

The industrial development of the Philadelphia SMSA area is widely diversified. Nearly 90% of all classes of manufacturing activity recognized by economic statisticians are represented to greater or less degree. No company or industry can be considered dominant. Only two industries, electrical machinery and apparel, account for more than 10% of manufacturing employment. Exhibit 6 to this brief is an article by Bertram W. Zumeta, Economist for the Federal Reserve Bank of Philadelphia describing the industry of the area in more detail.

As shown in Exhibit 6, while the industry of the Philadelphia SMSA is characterized by medium and small companies, it includes many corporations of national stature, presenting needs for the widest possible range of banking

services. There are also the wide range of wholesale and retail establishments and service companies necessary to serve a major metropolitan area. Although slightly more than 40% of the total land area is classified as farm land, farming does not play an important role.

The 1963 Census of Business gives the following statistics for the Philadelphia SMSA:

Manufacturing: 8,125 establishments; payroll, \$3,320,970,000; value added, \$5,987,310,000.

Wholesale Trade: 7,476 establishments; payroll, \$530,541,000; sales, \$10,252,356,000.

Retail Trade: 39,358 establishments; payroll \$666,822,000; sales, \$5,737,442,000.

Selected Services: 22,809 establishments; payroll \$321,010,000; receipts, \$1,074,494,000.

Commerce and Transportation

The Philadelphia port ranks second only to New York in total water-borne commerce and is first in foreign commerce. Its importance to the economy of the metropolitan area can hardly be exaggerated. It provides, directly or indirectly, more than 96,000 jobs, and 20% of all manufacturing jobs depend on raw materials received through the port.

The port can accommodate 150 deep-draft vessels at its docks, and a 40-foot deep channel has been dredged up river to the U. S. Steel Fairless plant. Three trunk line railroads run direct to shipside and are interconnected by the Philadelphia Belt Line Railroad. Approximately 350 motor truck lines furnish over-the-road service to all parts of the United States and Canada.

The port has three ore unloading piers with unloading capacity of 5,600 tons per hour; six oil docks with storage capacity of 9,900,000 barrels; two grain elevators with storage capacity of 4¾ million bushels; three coal tipples with

capacity of 37,500 tons per eight-hour day; eighty-one warehouses for general storage with 13½ million square feet of space; and nine cold storage warehouses with nearly 12 million cubic feet of space.

Philadelphia is also a major railroad center. The head offices of the Pennsylvania Railroad and The Reading Company are in the City.

The Philadelphia International Airport is located only 20 minutes by car from center city and is proving to be a point of attraction for new business development.

Philadelphia is also served by a network of superhighways centering on the Pennsylvania and New Jersey Turnpikes, two of the first and most successful ventures of this kind.

Educational, Scientific and Cultural Institutions

Since colonial days, the Philadelphia area has been an important educational, scientific and cultural center. Its 54 colleges and universities include The University of Pennsylvania, Temple University, Haverford College, Swarthmore College, Bryn Mawr College, Drexel Institute of Technology, Villanova University, St. Joseph's College, LaSalle College and Ursinus College, and numerous smaller and more specialized schools such as the Philadelphia Textile Institute and the Curtis Institute of Music.

There are five major medical schools in the City, the medical schools of The University of Pennsylvania and Temple, Jefferson Medical College, Hahnemann Medical College, and Women's Medical College. There are also highly respected scientific institutions such as the Academy of Natural Sciences and the Franklin Institute.

Among the well-known cultural institutions of Philadelphia are the Philadelphia Orchestra, the Philadelphia Museum of Art, the Pennsylvania Academy of Fine Arts, and numerous specialized museums, galleries, libraries and organizations.

Housing

On April 1, 1960, according to the 1960 Census, there were 1,333,821 housing units in the metropolitan area, of which 49% were located in the City of Philadelphia.¹⁴ The Census further disclosed that 64% of the housing units in the seven counties surrounding Philadelphia were single, detached units. Roughly two-thirds of those in the City of Philadelphia were single, attached (row and twin) structures.

Seventy percent of all occupied housing in the metropolitan area was owner-occupied. The median value of the homes in this group was \$10,900.

Economic and Social Problems

In the years after World War II, the Philadelphia SMSA lagged behind its urban competitors and the nation as a whole in economic growth. For the period between 1953-64, Philadelphia's employment growth rate was only one-twentieth of the national rate. While the decline in jobs was arrested about 1959 as a result of the renewal efforts discussed below, the number of jobs in the area has grown only one-third as fast as the national rate in the subsequent five-year period. Over this period Philadelphia has been in thirteenth place among the nation's sixteen major cities in terms of employment growth, well behind such other industrial areas as Baltimore, Newark, Chicago, St. Louis and Detroit.¹⁵

In spite of its natural advantages, the Port of Philadelphia also presents major problems. Foreign exports and imports of general cargo—as distinguished from bulk cargo—have been consistently disappointing over the years. Of

14. In 1950 the City had 57% of all housing units in the area and in 1940, 61%.

15. An analysis by the Federal Reserve Bank of Philadelphia mentions the following industries which have lagged in contribution to the metropolitan area's employment: trade industries, construction, apparel, electrical equipment, fabricated metals, furniture, leather, lumber and wood, petroleum refining, printing and publishing, rubber and plastics, textiles, tobacco, and ordinance.

the 53 million short tons handled in 1964, only 6 million were in this category. A recent study by the City of Philadelphia and the Chamber of Commerce concluded "... the general cargo being generated by the population of the Philadelphia-Camden area is not moving to any substantial extent across the Philadelphia or Camden waterfronts and Philadelphia is not, in fact, holding its own in terms of general cargo traffic as against the competing ports in the North Atlantic Range."

The problems of the center city are even more serious than those of the metropolitan area as a whole. In the post-war years, Philadelphia has experienced a massive exodus of industry and population to the suburbs. Those who moved out have been replaced largely by unskilled immigrants (mostly Negro) from the rural south. Their lack of training is reflected in high rates of unemployment and an excessive public assistance roll. Under these circumstances, they have not been able to attain an acceptable standard of living. Some 80,000 dwelling units are below the minimum standards of health and decency.

Another factor contributing to the economic problems of the Philadelphia area is the decline in home offices of substantial businesses. Some have moved away. Others have been sold or merged. These have not been replaced. In the vernacular, Philadelphia is in danger of becoming a "branch office town."

Renewal and Revitalization

During the last fifteen years, government officials and private citizens in the City of Philadelphia and its environs have organized efforts on many fronts to rehabilitate the City's facilities and revitalize its economy. As more fully described under "Commercial Banks and Community Needs" below, banks and other financial institutions have a crucial part in these efforts. The merged bank will be able to do more in this field than the two banks could do separately.

In the field of urban renewal and redevelopment, nearly \$225,000,000 has been spent by local, state, and federal agen-

cies and an additional \$135,000,000 by private developers in a wide variety of projects. Independence National Historical Park has been created out of a large area of blighted buildings in the vicinity of Independence Hall. An additional 28 blocks of slums in the nearby "Society Hill" area have been converted to modern housing. The Eastwick Development in southwest Philadelphia is the nation's largest redevelopment project. A comprehensive redevelopment of Market Street from City Hall to the Delaware River (known as "Market East") is under way.

Philadelphia has also been active in education and science, which are thought to be the indispensable catalyst for urban renewal.¹⁶ Temple University has spent \$25,000,000 for new facilities. The University of Pennsylvania has spent \$55,000,000 and is well along in a \$93,000,000 campaign. Other schools in the area have spent nearly \$10,000,000.

Recently, a new community college has gone into operation and a wholly new school board has been appointed to upgrade the public schools.

Plans are far along for a University City Science Center which will bridge the research gap between the universities and industry. The University of Pennsylvania, Drexel and other nearby institutions of learning, research and medicine have organized the University City development to provide attractive housing and surroundings for their students and faculty, and for scientists at the Science Center. These efforts have begun to bear fruit in the form of new research laboratories and research-oriented business moving into the Philadelphia area.

On the business side, the Philadelphia Industrial Development Corporation, a private non-profit corporation embodying a cooperative effort by government and business leaders, has worked with marked success to retard, and in some cases reverse, the outward flow of industry. Other

16. For example, Boston's successful efforts at renewal have been sparked by its great educational and scientific institutions which have attracted a host of research-oriented businesses along Route 128.

agencies in this field are Southeastern Pennsylvania Development Corporation, another private non-profit corporation, and Pennsylvania Industrial Development Authority, a public authority. Numerous industrial parks and similar complexes have sprung up, notably in the King of Prussia and Fort Washington areas.

A more specialized effort is the Food Distribution Center, another public-private cooperative enterprise, which took a long step toward restoring Philadelphia's traditional place in wholesale distribution of meat, seafood, and produce by supplying modern and convenient facilities to replace the antiquated and congested market along Dock Street.

The center city is also being transformed. Five new office buildings have been built in Penn Center, the site of the former Pennsylvania Railroad Broad Street station and tracks. Redevelopment has spread outward from Penn Center with a new hotel, a motor inn, four apartment complexes, a municipal services building, a large underground parking facility, and a building for Continental Bank and Trust Company, still in the earliest stage of construction. Plans are nearing completion for a new \$25,000,000 stadium in South Philadelphia.

Steps are also being taken to deal with the problems of the port. The Delaware River Port Authority (organized in 1931 to improve the port area and interstate transportation) has announced plans for a new high-speed line to link the New Jersey and Pennsylvania portions of the area even more closely. A non-profit Port Development Corporation, modeled generally after the Philadelphia Industrial Development Corporation and the Food Distribution Center, has recently been established to renovate and replace cargo handling facilities, and a \$25,000,000 loan has been authorized for this purpose.

In mass transportation, Philadelphia pioneered in promoting improved commuter rail service through the Passenger Service Improvement Corporation (PSIC), a City agency, and Southeastern Pennsylvania Transportation

Compact (SEPACT), a cooperative arrangement by four counties, Philadelphia, Bucks, Montgomery and Chester. These measures resulted in increased rail ridership and revenues to lessen passenger deficits of the Reading Company and the Pennsylvania Railroad.

A more formal and comprehensive approach to the regional problem of mass transportation was undertaken by the Pennsylvania Legislature when it created the Southeastern Pennsylvania Transportation Authority (SEPTA) under its "Mass Transportation Act of 1963." This Authority embraced five counties—Philadelphia, Bucks, Montgomery, Chester and Delaware—and was set up for the express purpose of achieving an integrated system of mass transportation within this region. To this end, SEPTA was granted the power and authority to acquire "by purchase, condemnation, lease, gift or otherwise" passenger transportation facilities in the five-county area. The problem of adequate, unified, efficient and economical transportation is very acute and any attempt to solve it will involve large financing, public and private, in which the merged bank will play its part along with other local banks.

In the field of housing, a massive plan is being developed to replace below standard housing facilities in the City of Philadelphia. Preliminary estimates of costs run as high as \$1,000,000,000 over a 10-year period. The task of financing this project obviously will require the coordinated efforts of many types of lenders as well as the taxing authorities.

In human renewal, after a relatively slow start, Philadelphia is developing an acceptable organization under the Economic Opportunities Act. The organization which has evolved is a sound one, with widespread support in the community. Philadelphia appears on the threshold of substantial accomplishment in this field.

Commercial Banks and Community Needs

It would be difficult to overstate the importance of a sound, aggressive, resourceful and adequate system of com-

mercial banks to the economic health of any metropolitan area. The tremendous size and diversity of the Philadelphia SMSA, the massive shifts of population, industry and business which have characterized it, and the pressing economic and social problems described above have made great demands upon the area's commercial banks. By the same token, they have presented the banks with many opportunities for service to the community and profit to themselves.

In their efforts to rehabilitate Philadelphia's economy, City officials and business leaders have relied on the commercial banks. The larger banks, especially—by reason of their influence in the financial and business communities and the scope and diversity of their services—have been called on to play a major role. They have greater numbers of skilled personnel to handle the new projects developed by the planners; and they have more resources—more “margin for error”—to accept the risks involved in implementing these projects.¹⁷

Unfortunately, Philadelphia commercial banks, as a group, are smaller than the financial business of the metropolitan area would warrant. They have not been able, in all cases, to take the part that the City officials and business leaders would have liked.

The Philadelphia Port is a dramatic illustration of how the problems of Philadelphia overtax the resources of its banks. Efforts to expand exports and general cargo commerce have been handicapped by the limited international banking resources in Philadelphia. The business has gone to other ports where financing is more readily available. John H. Frazier, Director of Port Development has stated:

“New York financing for international trade helps make the Port of New York the biggest General Cargo Port in the Nation. *Additional international banking*

17. For example, SEPTA is proposing one or more multi-million dollar revenue bond issues to finance acquisition of privately-owned transportation facilities. Undoubtedly the banks will be called upon to provide interim financing in very large amounts.

resources in Philadelphia will assist in creating a more competitive position. Cargo financed in Philadelphia should move through Philadelphia's Port." (emphasis supplied)¹⁸

Another area where larger banks have a special part to play is the effort to halt the exodus of business away from Philadelphia. As noted above, a substantial number of Philadelphia businesses have been sold to interests with headquarters located outside the area, and the headquarters offices so lost have not been fully replaced. Adequacy or inadequacy of local commercial banking resources is an influential factor in such moves and also in determining whether the local banks continue as major depositories or lose all but a payroll or office account.

In the competition to retain and attract prestige business accounts, which in turn will spur the general economy of the area, Philadelphia banks are at a disadvantage because they have smaller lending limits than the leading banks in New York, Pittsburgh and other cities. While theoretically a joint effort by a group of banks can overcome the inadequacy of the resources of any one of them, experience proves that in most cases the customer prefers to resort to a larger bank. This may ultimately mean the loss of headquarters business by Philadelphia. It inevitably means the loss of large, prestige accounts by the Philadelphia banks.¹⁹

While harder to demonstrate, there is also a similar trend among smaller businesses which are growing, changing, and developing new financial problems. These energetic,

18. The 1965 New York Port Handbook states that "over 70% of the international commerce of the United States is financed by New York banks."

19. While the Philadelphia banks are anxious to attract more national prestige accounts for themselves and the City, they do not neglect smaller customers and the general public. If there has been any preoccupation, it has been in the opposite direction as evidenced by their heavy commitment to retail banking. For example, 80% of Central-Penn's advertising budget of \$211,000 and 70% of Provident's budget of \$350,000 for the year 1965 were devoted to the retail market.

dynamic concerns, the kind that could do much for the Philadelphia business community, are often attracted to New York banks instead of Philadelphia banks by reason of the highly specialized services and personnel the New York banks are able to offer—again because of their larger size.

In sum, it can be said that Philadelphia desperately needs stronger commercial banks if it is to succeed in its economic, community and human renewal. The merger of Provident and Central-Penn is a small, but significant, step in that direction.

D. EFFECT ON COMPETITION

1. COMPETITION BETWEEN PROVIDENT AND CENTRAL-PENN

Retail Banking

Retail banking—i.e., personal and small business checking and savings accounts and loans—is probably the most intense area of competition in banking today. Commercial banks can no longer heavily rely for their working funds and earnings on large and steady corporate demand balances. Attractive short term money rates have induced alert corporation treasurers to reduce demand balances to a minimum and to invest the excess. More and more the banks must rely upon the deposits (including savings deposits) of individuals and small businessmen. In competition for this business, interest rates and quality of services are important, but they tend to level out, since no bank can long afford to pay more or offer less than its competitors. Thus, in the last analysis, and this is proven by every market survey, the retail customer's choice of a bank is largely influenced by convenience—the distance from his home to the bank office and the parking and other facilities available when he gets there.

As shown in the introduction to this brief and on the maps attached as Exhibits 1 and 2, the merger will not lessen competition in retail banking between Provident and Central-

Penn because there is virtually no duplication of branch office locations.

Moreover, the combination of Provident and Central-Penn branches will not give the resulting bank an advantage over other Philadelphia commercial banks. The resulting system of branches will be no more effective than the existing area-wide branch systems of First Pennsylvania, Girard, Fidelity-Philadelphia, Philadelphia National and Continental. There will still be significant gaps in the merged bank's coverage of the Main Line, Norristown and Old York Road sections—all areas where other banks are better represented.

Wholesale Banking

In the wholesale banking field, Provident and Central-Penn have both encountered far more competition from other commercial banks within and without the Philadelphia SMSA than they have from each other. This has been due in part to the complementary characteristics of the banking and trust services rendered, and particularly to the differing emphases on categories of new business activity.

In the field of wholesale banking, all Philadelphia commercial banks operate in the shadow of New York. Each of the two largest banks in New York has total assets more than twice the combined total assets of the ten largest Philadelphia banks. The seventh largest bank in New York has greater assets than the largest Philadelphia bank. New York is only an hour and a half from Philadelphia by train, about two hours by car. New York banks call regularly on the larger firms in Philadelphia, and the financial officer of any Philadelphia firm knows that if he is dissatisfied with the terms he is offered in this City, he has only to pick up the phone to tap the world's largest money market.²⁰

20. The larger corporations in York, Reading, Bethlehem, and other cities of eastern Pennsylvania tend to patronize New York banks because of their greater size and prestige, despite the fact that these cities are closer to Philadelphia. The same is true of the national corporations near Wilmington, Delaware, which by-pass Philadelphia to patronize New York banks.

Additional outside competition is encountered from the larger Pittsburgh banks, particularly the Mellon National Bank and Trust Co. and the Pittsburgh National Bank. The Mellon bank is substantially larger than the largest Philadelphia banks. Like the New York banks, the Pittsburgh banks regularly send representatives to solicit business in Philadelphia.

Thus, wholesale customers of the two banks are under constant aggressive solicitation by a host of other banks desiring a share of their business. In wholesale banking, convenience of office location is a secondary consideration because of the extensive use of the mails, including lock boxes, for deposits. Indeed, such use usually expedites item collection and reduces float by reason of around-the-clock mail pickup and check processing. This means that banks headquartered in other cities are not at a competitive disadvantage in seeking wholesale business in the Philadelphia area.

Mutual Customers

The fact that competition between Central-Penn and Provident has been minimal has been borne out by analyses of lists of various types of depositors to determine the extent of duplications. Comments on the several analyses of accounts with mutual customers (i.e., customers doing business with both banks) follow:

Savings Accounts. On September 30, 1965, Central-Penn had 54,127 savings accounts totalling \$65,285,000, and Provident had 67,601 totalling \$95,557,000. Out of the combined total of 3,277 savings accounts with balances of \$10,000 or more, there were only 28 mutual customers as follows:

| <i>Saving Fund Accounts</i> | | | | |
|-------------------------------|------------------|------------------|------------------|--|
| <i>Central-Penn</i> | | <i>Provident</i> | | |
| <i>No. of</i> | <i>Total</i> | <i>No. of</i> | <i>Total</i> | |
| <i>Accts.</i> | <i>Balances</i> | <i>Accts.</i> | <i>Balances</i> | |
| Accounts over \$20,000 | 1 | 10 | \$448,000 | |
| Accounts \$10,000 to \$20,000 | 27 | 18 | 197,000 | |
| | <u>\$435,000</u> | | <u>\$645,000</u> | |

Both banks presently pay 4% interest on savings accounts, as do the other principal commercial banks. The four mutual savings banks, with more than 50 branch offices in the metropolitan area, currently pay $4\frac{1}{4}\%$ interest.

Savings Certificates. There were nine mutual holders of the new $4\frac{1}{2}\%$ savings certificates, consisting of two non-profit organizations holding \$160,000 of each bank's certificates, and seven individuals holding \$70,000 of Provident's certificates and \$98,100 of Central-Penn's.

Certificates of Deposit. Certificates of Deposit issued by both banks to mutual depositors were as follows:

| | <i>Certificates of Deposit</i> | |
|---|--------------------------------|--------------------|
| | <i>Central-Penn</i> | <i>Provident</i> |
| 2 Political subdivisions | \$ 7,500,000 | \$6,500,000 |
| 2 National corporations | 1,178,750 | 600,000 |
| 2 Large local corporations | 1,500,000 | 1,900,000 |
| 2 Large local savings and loan associations | 150,000 | 500,000 |
| | <u>\$10,328,750</u> | <u>\$9,500,000</u> |

All of these funds are managed by competent administrators who have nearly unlimited competitive choices available within and without the metropolitan area.

Open Time Deposits. Four mutual customers had open time deposit balances in each bank in excess of \$10,000 as follows:

| | <i>Open Time Deposits</i> | |
|-------------------------------------|---------------------------|--------------------|
| | <i>Central-Penn</i> | <i>Provident</i> |
| Medium sized local corporation | \$ 66,000 | \$ 50,000 |
| Large local non-profit organization | 1,435,000 | 544,000 |
| Major public authority | 250,000 | 246,000 |
| Major insurance company | 722,000 | 824,000 |
| | <u>\$2,473,000</u> | <u>\$1,664,000</u> |

Here, again, the financial officers administering these accounts are under solicitation by many competitors for these deposits.

Regular Checking Accounts. Provident presently has about 59,600 regular checking accounts, and Central-Penn has over 29,100. A comparison of all regular checking accounts having balances of \$10,000 or more in each bank disclosed 139 mutual accounts, classified as follows:²¹

| <i>No. of Depositors</i> | | <i>Central-Penn</i> | <i>Provident</i> |
|------------------------------|-----------------------------------|---------------------|---------------------|
| 47 | National corporations | \$14,588,000 | \$31,497,000 |
| 42 | Local but large corps. or firms | 4,514,000 | 8,357,000 |
| 2 | Wealthy individuals | 258,000 | 450,000 |
| 11 | Large non-profit corporations | 602,000 | 1,392,000 |
| 6 | Medium size corporations | 137,000 | 187,000 |
| 18 | Securities brokers and dealers | 577,000 | 2,416,000 |
| 3 | Other individuals | 92,000 | 38,000 |
| 5 | States and political subdivisions | 3,027,000 | 7,088,000 |
| 5 | Savings and loan associations | 219,000 | 374,000 |
| <u>139</u> | | <u>\$24,014,000</u> | <u>\$51,799,000</u> |

The largest category by number of accounts and by dollar volume is national corporations—whose business is actively solicited not only by other Philadelphia banks but by New York banks and others across the country. Many have their headquarters outside metropolitan Philadelphia and some have no office in the area. These are frequently the hardest accounts to obtain and to retain in the face of the intense competitive activity.

The local but large corporations or firms are also subject to very competitive solicitation by both Philadelphia, New York and other banks.

The large non-profit corporations, such as major religious and charitable organizations, will not want for alternative banking choices after the merger in view of the knowledge, experience and contacts of their officers and trustees and the many banks available in the area.

21. While the tabulation includes duplicate accounts with balances of \$10,000 or more, it is at once obvious from the average balance per account (\$373,000 for Provident and \$173,000 for Central-Penn) that most of the balances represented are far in excess of \$10,000. The median for Provident was a \$75,000 balance and the median for Central-Penn was \$50,000.

Medium sized corporations may not be subject to as much solicitation by out-of-town banks as the larger corporations, but by the same token there are many Philadelphia area banks in a position to meet their needs. After the merger, their competitive choices, while reduced by one, will still be more than ample.

Deposits of securities brokers and dealers are usually placed with banks primarily as consideration for the allocation of securities business from bank portfolios, trust departments and customers' securities departments. The balances in such accounts are generally proportional to the amount of business received. Thus, the duplicate accounts in this group do not represent any real competition between Provident and Central-Penn which would be eliminated by the merger.

Wealthy individuals are influenced in the selection of depositories by convenience and by such factors as acquaintance with bank officers, corporate banking and personal trust relationships, attractiveness of facilities and the services rendered by particular individuals within a bank. The duplicate accounts in this group are attributable to considerations of this kind rather than competition between the banks.

Public funds deposits, while usually required in Pennsylvania to be secured by pledge of bonds, represent a highly competitive field with banks acting in some cases as township or school district treasurer for a nominal fee in order to protect balances. The forthcoming consolidation of school districts in Pennsylvania and the resulting reduction in the number of such depositors has already intensified competition for the declining number of accounts.

Correspondent Banks. Domestic correspondent bank business is probably the most competitive category of wholesale banking. Mutual correspondent bank customers of Central-Penn and Provident and current balances are as follows:

| <i>No. of Accts.</i> | | <i>Central-Penn</i> | <i>Provident</i> |
|----------------------|--|----------------------|----------------------|
| 4. | Philadelphia mutual savings banks | \$4,445,000 | \$6,905,000 |
| 8 | Four county area (excl. Phila. mutual savings banks) | 4,443,000 | 2,067,000 |
| 8 | Other Pennsylvania | 620,000 | 1,421,000 |
| 13 | Outside Pennsylvania | 902,000 | 1,982,000 |
| <u>33</u> | | <u>\$10,410,000*</u> | <u>\$12,375,000*</u> |

* Includes balances of correspondent banks with which Central-Penn and/or Provident maintains reciprocal accounts \$ 4,856,000 \$ 3,040,000

There can be no doubt that the competitive choices remaining available to the present mutual correspondent bank customers tabulated above will be more than adequate after the merger.

Five foreign banks are depositors of both banks, current balances being as follows:

| <i>No. of Accts.</i> | <i>Central-Penn</i> | <i>Provident</i> |
|----------------------|---------------------|--------------------|
| 5 | <u>\$ 318,000*</u> | <u>\$ 559,000*</u> |

* Includes reciprocal balances (see above) \$ 151,000 \$ 210,000

Principal competitors for this type of business are the largest banks in New York, Chicago, San Francisco, Philadelphia, Boston and other international financial centers.

Loans. Provident's and Central-Penn's loans (gross) totalled \$412,144,000 and \$226,369,000, respectively, on September 30, 1965. Loan balances of \$10,000 or more for each bank were compared, disclosing 32 mutual borrowers to whom Central-Penn's loans totalled \$12,483,000 and Provident's totalled \$20,454,000. These mutual loans are summarized below:

| <i>Loans of \$1,000,000 or more at either bank</i> | <i>Amount of Loan</i> | |
|--|-----------------------|---------------------|
| | <i>Central-Penn</i> | <i>Provident</i> |
| A. | \$1,000,000 | \$ 1,500,000 |
| B. | 2,425,000 | 65,000 |
| C. | 1,214,000 | 4,085,000 |
| D. | 900,000 | 3,681,000 |
| E. | 900,000 | 1,500,000 |
| F. | 929,000 | 2,207,000* |
| G. | 300,000 | 1,500,000 |
| H. | 845,000 | 3,309,000 |
| | <u>\$8,513,000</u> | <u>\$17,847,000</u> |
| <i>Loans of less than \$1,000,000</i> | | |
| 25 loans (see below) | 3,970,000 | 2,607,000 |
| | <u>\$12,483,000</u> | <u>\$20,454,000</u> |

Comments on mutual borrowers of \$1,000,000 and more:

Borrower A. This finance company has lines of credit totalling \$24,850,000 from 62 banks.

Borrower B. Because of legal lending limit²² on loans to a parent and subsidiary companies, Provident sold the amount in excess of its overall limit to several banks including Central-Penn.

Borrower C. Loans in excess of Provident's legal lending limit were participated to Central-Penn and one other bank. \$223,00 of Central-Penn's loan to Borrower C is through the third bank which is agent for a portion of the aggregate borrowings.

Borrower D. This credit is shared by two other Philadelphia banks and by one New York City bank, at the request of the borrower.

Borrower E. Central-Penn and Provident share these loans with a third Philadelphia bank which is agent.

Borrower F. Participations in loans to this borrower and mutual customer were purchased by Provident from one New York City bank and by Central-Penn from two New York City banks.

Borrower G. A finance company, has lines of credit from 74 banks totalling \$23,575,000.

Borrower H. Central-Penn and Provident participate with approximately eleven banks in this credit for which a New York bank is agent.

22. The present lending limits are \$2,500,000 for Central-Penn and \$7,000,000 for Provident. The lending limit for the merged bank will be \$10,000,000.

The mutual loans of less than \$1,000,000 fall into the following categories:

| Types of Loans | Amount of Loan | |
|---|--------------------|--------------------|
| | Central-Penn | Provident |
| Secured largely by marketable collateral: | | |
| 1 Corporation | \$ 77,000 | \$ 70,000 |
| 10 Individuals | 974,000 | 419,000 |
| Secured by other collateral: | | |
| 3 Corporations* | 1,373,000 | 954,000 |
| 2 Individuals | 25,000 | 27,000 |
| Unsecured: | | |
| 8 Corporations* | 1,511,000 | 1,092,000 |
| 1 Individual* | 10,000 | 45,000 |
| | <u>\$3,970,000</u> | <u>\$2,607,000</u> |

* Banks other than Central-Penn and Provident participate in these credits.

The foregoing comments and classification show that the merger will pose no problem for the large corporate borrowers. All enjoy high credit standing and have multiple commercial banking alternatives available to them. They also show that there was an insignificant number of mutual loans to individuals or small businesses. The ten individual mutual customers who borrow from both banks on marketable collateral would have no difficulty making other borrowing arrangements should they choose to do so.

A comparison of lists of consumer credit customers of the two banks would have presented a monumental problem and was not attempted. It is doubtful that more than an insignificant overlap is involved, not only because of the complementary branch systems, but also because of differences in the sources of dealer paper, which comprises \$64,000,000, or about 65%, of Provident's outstandings. Of such dealer paper, about 80% originates outside the Philadelphia SMSA, largely in Ohio, Kentucky, West Virginia, Maryland and Virginia. While Central-Penn is also active in dealer origi-

nated consumer financing, nearly all is purchased in the metropolitan area.

General Comment. In the foregoing discussion of the present customer relationships shared by Central Penn and Provident, emphasis has been placed upon the fact that the merger would not deprive any customer of the opportunity to continue to do business with more than one bank and with a minimum of inconvenience. This does not mean, however, that the resulting bank will not seek to retain these customers. In fact, it will make every effort to reduce customer attrition to a minimum by strict attention to the maintenance of the same high quality and highly personalized service for which both banks have been well known over the years. These efforts will be aided by the availability of expanded banking and trust services at many of the branch locations.

2. COMPETITION WITH OTHERS

Commercial banks compete not only with each other but with many other types of savings and financing institutions and agencies. Such competition has become more intensive with the passing years. Since 1961, particularly, the competitive tempo has further increased as the commercial banks have had to rely more and more on interest-bearing accounts and certificates of deposit and as they have brought all of the modern marketing techniques into play.

(a) *Commercial Banks*

Much has already been stated about the current competition between commercial banks. The following discussion is concerned primarily with competition with banks and for business outside the Philadelphia SMSA, and also with the matter of concentration of commercial banking resources.

Indicative of some of the competition with banks outside the metropolitan area are the following statistics:

| | <u>Central-Penn</u> | | <u>Provident</u> | |
|--|---------------------|---------------------|------------------|----------------------|
| | <i>No. of</i> | | <i>No. of</i> | |
| <i>Confirmed Commercial</i> | <i>Cus-</i> | | <i>Cus-</i> | |
| <i>Lines of Credit*</i> | <i>tomers</i> | <i>Totals</i> | <i>tomers</i> | <i>Totals</i> |
| Customers also having lines from banks outside metropolitan area** | 46 | \$52,550,000 | 149 | \$232,215,000 |
| All others | <u>32</u> | <u>38,757,000</u> | <u>192</u> | <u>110,887,000</u> |
| | <u>78</u> | <u>\$91,307,000</u> | <u>341</u> | <u>\$343,102,000</u> |
| ** % of total | 59.0% | 57.6% | 43.7% | 67.7% |

* Formal lines of credit confirmed to the customer, as distinguished from lending officers' discretionary guidance lines.

*Correspondent Bank Customers**

Banks outside Philadelphia and the three contiguous counties

| | | | | |
|------------|------------|---------------------|------------|---------------------|
| | 87 | \$13,703,000 | 260 | \$43,385,000 |
| All others | <u>15</u> | <u>8,694,000</u> | <u>25</u> | <u>10,924,000</u> |
| | <u>102</u> | <u>\$22,397,000</u> | <u>285</u> | <u>\$54,309,000</u> |

* On June 30, 1965, Provident and Central-Penn together held 11.8% of the correspondent bank deposit balances of the six largest Philadelphia banks. Balances of the two largest banks, First Pennsylvania and Philadelphia National, aggregated 68.3% of the total.

*Demand Deposit Accounts which are assigned to officers for follow-up, excl. correspondent banks**

Accts. controlled from outside Philadelphia SMSA**

| | | | | |
|---------------|--------------|----------------------|--------------|----------------------|
| | 137 | \$29,919,000 | 553 | \$41,416,000 |
| All others | <u>1,897</u> | <u>89,451,000</u> | <u>5,044</u> | <u>156,933,000</u> |
| | <u>2,034</u> | <u>\$111,370,000</u> | <u>5,597</u> | <u>\$198,349,000</u> |
| ** % of total | 6.7% | 19.7% | 9.9% | 20.9% |

* The executive offices of many and the operations of some of these corporate customers are located in New York City.

Fiduciary Services. In the corporate fiduciary field as well, neither the boundaries of the metropolitan area nor those of the four-county branch banking area protect Philadelphia banks from outside bank competition or restrict the opportunities of Philadelphia banks to secure outside business. Moreover, in this important field of estates, trusts, investment agency, advisory and custodian accounts, banks encounter intense competition not only from each other but from lawyers, securities brokers, investment counsel, mutual funds, insurance companies, and from non-professional individuals. By way of illustration, in the 7426 wills probated in Philadelphia, Bucks, Delaware and Montgomery Counties in the year 1964, involving assets estimated at a total of nearly \$156 million, corporate fiduciaries reportedly were appointed and qualified as to 661 estates aggregating \$39.5 million or 25.3% of the total.

Bank Concentration. The actual scope and intensity of competition with and among banks for commercial banking, trust and the newer data processing and other accounting services rendered by the banks tend to diminish the theoretical significance of bank asset concentration ratios, so long as adequate competitive bank choices remain conveniently available. Nevertheless, even by the bank asset concentration ratio test, it is evident that the banking scene in the Philadelphia metropolitan area is dominated less by its largest banks than is the case in all but one important financial center of the United States. Attention was called to this situation by the Federal Reserve Board in its statement in the case of Fidelity-Philadelphia's merger with Liberty Real Estate. The Board referred to a 1959 Congressional finding reported in S. Rep. No. 196, p. 27, 86th Cong. 1st sess. 1959. The finding of the Congressional study was as follows (the listing sequence of the centers has been rearranged in the order of concentration rank):

67b

| | New York | New York | New York |
|---|----------|----------|----------|
| — | 60 | 41.6 | 22.0 |

It will be noted that Philadelphia ranked 13th among the 15 principal financial centers as to the percentage of assets owned by the four largest banks, and ranked 14th as to the percentage held by the two largest and the largest banks. There has been no significant change in Philadelphia's concentration ratio since 1959, although in the interim the metropolitan area has been redefined as the Philadelphia Standard Metropolitan Statistical Area. There will be no significant change as a result of the merger.

On June 30, 1965, the latest date for which complete figures are available, the four largest banks in the SMSA held the following percentages of IPC deposits and loans (net):

| Rank | Bank | Percentage Held | |
|------|-----------------------|-----------------|-------------|
| | | IPC Deposits | Loans (net) |
| 1 | First Pennsylvania | 16.28% | 19.50% |
| 2 | Philadelphia National | 14.79 | 15.46 |
| 3 | Girard Trust | 12.97 | 13.25 |
| 4 | Fidelity-Philadelphia | 10.62 | 10.13 |
| | Four largest | 54.66% | 58.34% |

On June 30, 1965, Provident and Central-Penn together held 12.46% of total IPC deposits and 12.84% of total loans (net) in the SMSA. Replacement of Fidelity-Philadelphia by the merged bank in the table above would raise the percentages held by the four largest banks only to 56.50% in the case of IPC deposits and to 61.05% in the case of loans (net).

In the matter of personal trust assets, the resulting bank would continue to rank fourth among the Philadelphia banks, even though it is believed that it would hold the largest number of individual accounts. This reflects the above-average proportion of smaller trusts being administered by Provident and Central-Penn.

(b) *Mutual Savings Banks*

(c) *Savings and Loan Associations*

The four mutual savings banks with head offices in Philadelphia are well managed institutions with records of sound

operation for from 111 to 149 years. One, the Philadelphia Saving Fund Society, is the largest bank in eastern Pennsylvania. The four savings banks have more than 50 branches in the metropolitan area. Through highly promotional radio and television announcements and display advertising, the public is constantly reminded that "mutuals" pay $4\frac{1}{4}\%$ interest on regular savings accounts ($\frac{1}{4}\%$ more than commercial banks are permitted to pay in Pennsylvania). This competitive advantage has contributed much to their higher rate of growth than that recorded in savings deposits of the commercial banks.

The insured savings and loan associations have competed successfully for personal savings and have also solicited corporation funds. Promotion has emphasized the "savings" function, the higher dividend rate (until the mutual savings banks also decided to pay $4\frac{1}{4}\%$), "Federal" insurance, and frequently, valuable premiums on new accounts. The success with which they have competed with mutual savings and large commercial banks for savings and mortgage loans is indicated in Exhibit 5. There is no area in the City where the commercial banks are not in direct competition with a nearby office of a savings and loan association.

Moreover, many out-of-state (principally California) savings and loan associations advertise and use direct mail extensively in solicitation of mail deposits, emphasizing the higher interest rates offered. First Pennsylvania cited the drain of deposits resulting from such out-of-state competition as a principal reason for its recent decision to offer five year $4\frac{1}{2}\%$ savings bonds, now also offered by most other Philadelphia banks.

It will be noted in Exhibit 5 that savings deposits and mortgage loans of the eight largest Philadelphia commercial banks amounted in the aggregate to only 16.94% and 6.99%, respectively, of the combined totals for such banks, the four mutual savings banks and the insured savings and loan associations in the area as of December 31, 1964. On the same basis, the merged bank would have held 2.90% of savings deposits and 0.77% of mortgage loans.

(d) Life Insurance Companies

The Philadelphia telephone directory lists more than 300 insurance companies with offices in the City. The following tabulation shows total admitted assets, mortgage loans and policy loans of the larger companies with headquarters in Philadelphia as of December 31, 1964:

| <i>Companies</i> | <i>Admitted Assets</i> | <i>Mortgage Loans</i> | <i>Policy Loans</i> |
|------------------------------|------------------------|------------------------|----------------------|
| Fidelity Mutual Life | \$ 442,770,000 | \$ 146,061,000 | \$ 30,216,000 |
| Home Life | 95,338,000 | 45,612,000 | 3,039,000 |
| Life Ins. Co. of N. Amer. | 44,716,000 | 7,660,000 | 1,354,000 |
| Penn Mutual Life | 2,068,973,000 | 625,256,000 | 140,358,000 |
| Philadelphia Life | 109,355,000 | 36,822,000 | 6,646,000 |
| Presbyterian Ministers' Fund | 95,760,000 | 19,098,000 | 6,428,000 |
| Provident Mutual Life | 989,936,000 | 328,387,000 | 58,626,000 |
| Total | \$3,846,848,000 | \$1,208,896,000 | \$246,667,000 |

The three largest companies have been very active in private placement financing, and they are joined in competition for local financing by all of the leading national life insurance companies, and many Canadian companies as well. All of these and many smaller companies actively solicit real estate mortgages—residential, commercial, and industrial—for investment. Some companies maintain their own mortgage offices in Philadelphia while others rely upon local mortgage service companies for their supply.

(e) Credit Unions

There are reported to be 285 credit unions in the Philadelphia area. The volume of savings invested in and loans granted by all credit unions in the SMSA is not known, but 1,273 Pennsylvania credit unions were reported to have total assets of \$365.9 million and total loans of \$244.9 million as of December 31, 1964. Credit unions make the most of their competitive position, emphasizing mutual ownership, low loan interest rates, in some cases the payroll deduction method of loan repayment and savings, and convenience of access to credit union facilities.

(f) Sales Finance Companies and Personal Loan Companies

There are understood to be about 100 sales finance companies and about 300 small loan and consumer discount companies operating within the service area of the merged bank. Many of these companies have large branch office systems. The Philadelphia telephone directory indicates that Beneficial Finance Companies have 14 offices, Household Finance Corporations have 26 offices, and Bitter Finance Companies have 18 offices. All of these companies compete very aggressively with the commercial banks for automobile, home modernization, and personal loan financing.

(g) Factors

There are 15 factoring companies with offices in the City of Philadelphia.

(h) Direct Lending Agencies of Government

Such agencies are not regarded as competitive with commercial banks in the metropolitan area, with the exception of limited activity on the part of farm credit agencies in the rural sections of the contiguous counties.

3. GROWTH OF COMPETING INSTITUTIONS

The November Bulletin of the Pennsylvania Bankers Association reported comparative asset growth of banks, savings and loan associations and credit unions for the period 1959-1964 as follows: (in thousands)

| | 1964 | 1959 | % Increase |
|-------------------------------|--------------|--------------|------------|
| Banks | \$24,200,000 | \$17,700,000 | 36.7% |
| Savings and loan associations | 5,600,000 | 3,500,000 | 60.0 |
| Credit unions | 365,900 | 216,500 | 69.0 |

It will be noted that savings and loan associations and credit unions both registered greater percentage increases than banks.

4. LOAN PARTICIPATIONS—YEAR 1964

Central-Penn. Participations of \$391,000 in loans totalling \$802,000 were placed primarily with correspondent banks to assist in their investment programs. Two other participations totalling \$41,000 in loans totalling \$71,000 were placed with other banks at the request of the borrowers. No loans were participated because they exceeded Central-Penn's legal lending limit.

Provident. In four loans totalling \$30,142,000, 31 participations aggregating \$15,652,000 were placed with other banks because the loans exceeded Provident's legal lending limit. In thirteen loans totalling \$53,638,000, 34 participations totalling \$35,920,000 were placed with other banks at the request of the borrowers. Out of 51 loans totalling \$33,427,000, 249 participations aggregating \$11,427,000 were placed with correspondent banks to assist them in investing surplus funds.

5. FINANCIAL FACTORS

The complementarity of the merger insofar as capital is concerned is reflected in the ratio of deposits to capital for the two banks. Provident's ratio is about 8.1, the second lowest among major Philadelphia banks. Central-Penn's ratio is about 11.3, the highest. The average is about 9.3.

The fact that both banks need the added growth and earnings potential which will be afforded by the merger is shown by their ratios of stock prices to book value, 121.1% for Central-Penn and 130.4% Provident, the lowest and next-to-lowest among major Philadelphia banks. The average is about 140%.

The fact that the merger will strengthen Central-Penn is obvious. The fact that Provident is not obtaining a pre-eminent position by the merger is reflected in the absence of any "premium." The exchange ratio is based directly on earnings, adjusted book values, and deposit loan size and growth factors.

— End —

**Notes as to Supplementary Material Supplied to
Comptroller**

Note A: The Application as filed with the Comptroller of the Currency contained the following material not printed in this Appendix:

1. Maps showing the locations of all banking offices in Philadelphia, Bucks, Delaware and Montgomery Counties, Pennsylvania and in the City of Camden, New Jersey.

2. Information regarding Demand and Time and Savings "I.P.C." Deposits for each bank located in Philadelphia, Bucks, Delaware, Montgomery and Chester Counties, Pennsylvania, and in Burlington, Gloucester and Camden Counties, New Jersey.

3. Location of branch offices of all banks headquartered in Philadelphia, Bucks, Delaware and Montgomery Counties, Pennsylvania and in the City of Camden, New Jersey.

4. Information regarding Withdrawable Balances and Loans of Mutual Savings Banks, Savings and Loan Associations and the six Largest Commercial Banks in the Service Areas of Provident National Bank and Central-Penn National Bank.

5. Information regarding the economy of Philadelphia.

All of the above material is contained in the type-written record as Exhibit "A" to the motion of defendant banks for final judgment.

Note B: Subsequent to the filing of the application with the Comptroller of the Currency the banks submitted to the Comptroller the following additional material:

1. Material on bank branches in Camden, Burlington and Gloucester Counties, New Jersey.

2. Information regarding waterborne commerce to and from the Port of Philadelphia.

3. Information regarding corporations headquartered in the Philadelphia area.

4. Maps showing primary service areas of Provident and Central-Penn branches and the banks' comments on statements made in Federal Reserve Advisory Report regarding branches of Provident and Central-Penn allegedly in competition with one another.

5. Information regarding saving deposit growth of Provident and Central-Penn as compared with mutual savings banks in area.

6. Answers to specific questions raised by the Comptroller pertaining to:

a) The relative growth of loans in the Philadelphia area as compared with other financial centers

b) The integration of Camden, New Jersey banks with the Philadelphia banking community through check clearing procedures

c) Central-Penn's need for additional capital

d) The development of Central-Penn's competitive position since the *PNB-Girard* case

e) The difficulties faced by Central-Penn in building a trust department

f) Central-Penn's need for additional space

g) Central-Penn's management

h) Difficulties experienced by Central-Penn because of its legal lending limit

i) The bank merger trend in Philadelphia

j) The importance of larger banks to the Philadelphia economy

k) Competitive problems resulting from geographic gaps in the branch system of Provident and Central-Penn

7. Information regarding competitive financial institutions.

8. Information regarding mutual customers of Provident and Central-Penn.

9. Additional information regarding branches of Provident and Central-Penn allegedly in competition with one another.

All of the above material is contained in the type-written record as Exhibit "D" to the motion of defendant banks for final judgment.

ADVISORY REPORT OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE.

Jan. 7, 1966

REPORT BY THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
to the

Comptroller of the Currency, under section 18(c) of the
Federal Deposit Insurance Act, on the competitive
factors involved in the proposed merger of

Provident National Bank, Philadelphia, Pennsylvania

and

*Central-Penn National Bank of Philadelphia,
Philadelphia, Pennsylvania*

I. THE PROPOSAL

Central-Penn National Bank of Philadelphia, Philadelphia, Pennsylvania (Central-Penn) (deposits \$327,070,000 as of October 13, 1965), and Provident National Bank, Philadelphia, Pennsylvania (Provident) (deposits \$616,742,000 as of October 13, 1965), have requested prior written consent of the Comptroller of the Currency to merge under the charter of Central-Penn and with the title of Provident National Bank.

Central-Penn and Provident operate offices in the Philadelphia area as follows:

| County | Number of Offices | | |
|---------------------------|-------------------|-----------------|----------------|
| | Central-Penn | Provident | Resulting Bank |
| Philadelphia ^a | 13 | 20 ^b | 33 |
| Bucks | 8 | 2 | 10 |
| Delaware | 1 | 5 | 6 |
| Montgomery | 3 ^b | 5 | 8 |
| | <u>25</u> | <u>32</u> | <u>57</u> |

^a Boundaries of the city of Philadelphia and county of Philadelphia are identical.

^b Includes one office which has been approved but not yet established.

The resulting bank contemplates the continued operation of all offices of the two banks.

II. THE COMMUNITIES

The application indicates that the area served by the two banks consists of the Philadelphia Standard Metropolitan Statistical Area, as defined by the United States Bureau of the Budget, which includes the city of Philadelphia, the Pennsylvania counties of Bucks, Chester, Delaware, and Montgomery, and the New Jersey counties of Burlington, Camden, and Gloucester.

The main offices of both institutions are located in Philadelphia, within two blocks of each other. Under Pennsylvania law a bank may operate branch offices in the county in which the head office is located and in counties contiguous to the head office county. The counties contiguous to Philadelphia County (city and county boundaries are identical) are Bucks, Delaware, and Montgomery Counties. As previously indicated both Central-Penn and Provident operate at least one office in all four counties. The community or "relevant geographical market" was defined as this four-county area by the United States Supreme Court in its majority opinion in *United States v. Philadelphia National Bank et al.* (374 U.S. 320, 359-362 (1963)) and appears to apply to this case as well.

Philadelphia is the fourth largest city in the country. In common with many other large cities, Philadelphia has experienced a movement of people to the surrounding suburban areas during the 1950-1960 decade. The census figures for Philadelphia and the three contiguous counties for 1950 and 1960 are as follows:


| | 1950 | 1960 | % change |
|--------------|------------------|------------------|---------------|
| Philadelphia | 2,071,605 | 2,002,512 | - 3.3 |
| Delaware | 414,234 | 553,154 | + 33.5 |
| Montgomery | 353,068 | 516,682 | + 46.3 |
| Bucks | 144,620 | 308,567 | + 113.8 |
| | <u>2,983,527</u> | <u>3,380,915</u> | <u>+ 13.3</u> |

In recent years, Philadelphia has been experiencing a period of urban redevelopment in order to eliminate blighted areas and provide more attractive residential sections. The four-county area contains a highly diversified industrial economy.

III. COMPETITION BETWEEN THE TWO INSTITUTIONS

Both banks operate branch systems in the same general area and offer similar commercial banking and fiduciary services. The head office of each institution is located in the downtown section of the city of Philadelphia, two blocks apart. Central-Penn operates a total of 24 offices and Provident 31 offices. Each bank also has one additional office which has been approved but has not yet opened for business.

Competition between offices of the two banks ranges from prime to virtually none. Both institutions are represented in each of the four counties by at least 1 office. In Philadelphia, both banks operate 5 offices in the downtown area, and Provident has an additional office immediately outside of the downtown area. In that portion of Philadelphia to the north of the downtown section, Provident has 10 offices (plus an approved office which has not yet opened for business) to Central-Penn's 3; in the west, Central-Penn has 4 to Provident's 2; and in the south, both operate 1 office. In Delaware County, Central-Penn's 1 office and Provident's 5 offices are generally in the central section of the county. Of the 5 offices that Provident has in Montgomery County, 2 are in the southeastern portion, 2 in the northeastern, and 1 in the south-central section. Central-Penn's 2 Montgomery County offices (plus 1 which has been approved but not yet opened) are in the southeastern portion of the county. In Bucks County all of Central-Penn's 8 offices are in the eastern section, while the 2 offices of Provident are in the southwestern section of the county. Individual offices of the two banks which are considered to be in competition to a significant degree are listed below by county and, in the case of Philadelphia, by section of the city.



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| County | Central-Penn Office | Provident Office |
|--|---|--|
| <i>Philadelphia County</i> <i>Downtown:</i> | Main office, N.W. corner Broad and Walnut Streets 21 South 12th Street 17th and Arch Streets 7th and Chestnut Streets and 2nd and Pine Streets | Main office, S.W. corner Broad and Chestnut Streets 12th and Chestnut Streets and Market and Juniper Streets 17th and Chestnut Streets 4th and Chestnut Streets |
| <i>West Philadelphia:</i> | 58th Street and Balti- more Avenue | 19 South 52nd Street |
| <i>North Philadelphia:</i> | Broad Street and Glenwood Avenue 5th Street and Wyoming Avenue 8325 Stenton Avenue | 3314 Germantown Avenue Broad and Loudon Streets 78th Street and Ogontz Avenue |
| <i>Delaware County:</i> | 301-307 Baltimore Pike, Springfield | 731 Powell Road, Springfield |
| <i>Montgomery County:</i> | 600 Park Avenue, King of Prussia In- dustrial Park, Upper Merion Township | King of Prussia Plaza, Upper Merion Town- ship |

In addition to the offices listed above, it would appear that there is potential for competition between the Ardmore office of Central-Penn, which has been approved but not yet opened, and Provident's existing Gladwyne office.

The application indicates that there are 226 common depositors (including individuals, partnerships, corporations, public funds, savings and loan associations, and domestic and foreign correspondent banks having individual account balances in excess of \$10,000), with aggregate balances of \$48,236,850 in Central-Penn (15 per cent of its total deposits)

and \$76,772,000 in Provident (12 per cent of its total deposits). Thirty-three of the common depositors are correspondent banks, which have demand balances of about \$10 million at Central-Penn and \$12 million at Provident. Eighty-nine of the common depositors are national corporations or large local corporations, which have demand balances of \$19 million at Central-Penn and \$40 million at Provident. It was also indicated that there are 32 common borrowers (with balances of over \$10,000), with loans totaling \$12,482,000 at Central-Penn and \$20,454,000 at Provident. According to the application "A comparison of lists of consumer credit customers of the two banks would have presented a monumental problem and was not attempted. It is doubtful that more than an insignificant overlap is involved, not only because of the complementary branch systems, but also because of differences in the sources of dealer paper, which comprise \$64,000,000 or about 65 per cent, of Provident's outstandings."

An analysis of the deposit and loan accounts of the two banks as of September 30, 1965, is presented in the following schedules (in thousands of dollars).

| <i>Type of deposit</i> | <i>Central-Penn</i> | | <i>Provident</i> | |
|------------------------|---------------------|-----------------|------------------|-----------------|
| | <i>Amount</i> | <i>Per cent</i> | <i>Amount</i> | <i>Per cent</i> |
| | | | | |
| Demand: IPC * | 167,731 | 52.9 | 322,325 | 54.1 |
| Public | 17,107 | 5.4 | 42,818 | 7.2 |
| Other | 22,605 | 7.1 | 43,861 | 7.4 |
| Total demand | 207,443 | 65.4 | 409,004 | 68.7 |
| Time: IPC | 91,876 | 29.0 | 149,105 | 25.0 |
| Public | 15,915 | 5.0 | 30,694 | 5.2 |
| Other | 2,030 | 0.6 | 6,709 | 1.1 |
| Total time | 109,821 | 34.6 | 186,508 | 31.3 |
| | 317,264 | 100.0 | 595,512 | 100.0 |

* Individuals, partnerships, and corporations.

Loan account (gross)

| Type of Loan | Central-Penn | | Provident | |
|------------------------------|--------------|----------|-----------|----------|
| | Amount | Per cent | Amount | Per cent |
| Real estate loans: | | | | |
| Residential | 1,958 | 0.9 | 13,950 | 3.4 |
| Commercial | 16,145 | 7.1 | 9,672 | 2.3 |
| Farm | 78 | — | 276 | 0.1 |
| Total real estate loans | 18,181 | 8.0 | 23,898 | 5.8 |
| Financial institutions | 18,820 | 8.3 | 46,470 | 11.3 |
| Purchase or carry securities | 923 | 0.4 | 23,252 | 5.6 |
| Farm | 45 | — | 292 | 0.1 |
| Commercial and industrial | 105,923 | 46.8 | 195,651 | 47.5 |
| Installments | 76,222 | 33.7 | 112,037 | 27.2 |
| Other | 6,255 | 2.8 | 10,544 | 2.5 |
| Total loans | 226,369 | 100.0 | 412,144 | 100.0 |

As indicated in the above schedules, both banks have about two-thirds of their deposits in the demand category. The major portion of each loan portfolio is commercial and industrial loans, with consumer instalment loans next in importance.

As of September 30, 1965, loans represented 71 per cent of deposits at Central-Penn and 69 per cent of deposits at Provident. Both banks pay 4 per cent on savings accounts and offer savings certificates or savings bonds at $4\frac{1}{2}$ per cent. The current legal lending limit is \$2,500,000 and \$7,000,000 at Central-Penn and Provident, respectively.

Both banks offer fiduciary services, but Central-Penn's trust department is considerably smaller than Provident's.

In summary, both banks operate branch systems in the same general area and offer similar banking and fiduciary services. There is a great deal of similarity between the deposit structures and composition of the loan portfolios. The application indicates that the two banks are complementary, rather than competitive, because of the relative location of branch offices, and because of the lack of competition in certain services offered such as fiduciary services, in-

ternational operations, and construction loans. It is also noted that even where the offices of the two banks do compete there is usually an office of a larger bank in the same area. It seems apparent that the variance in the legal lending limit of the two banks tends to lessen competition for the larger commercial loans. However, it also seems apparent that a number of the offices of the two banks are either currently or potentially significant competitors, and that generally the two banks are prime competitors in "retail" banking and also compete to some extent in "wholesale" banking, particularly for business of medium-size concerns. From the foregoing, it is clear that a significant degree of competition exists between the two institutions.

IV. EFFECT ON OTHER INSTITUTIONS

As of October 13, 1965, the Philadelphia four-county area was served by 34 commercial banks, which operated 377 banking offices in the area and held IPC deposits of \$5.1 billion and total loans of \$4.2 billion. Because of their size and the presence of at least one branch office in each of the four counties, Central-Penn and Provident are considered, generally, to be in competition with all of the other banks in the area. Such competition, however, varies considerably in intensity within the four-county area. Both banks are prime competitors with other banks in Philadelphia. Outside of Philadelphia, Provident's most intensive operation is in Delaware County, while Central-Penn's most intensive area of operation is in the eastern section of Bucks County. The following schedule reflects the banking structure of the Philadelphia four-county area, with amounts listed in thousands of dollars as of October 13, 1965.

| Name of bank | IPC deposits | % | Loans | % | Banking Offices | % |
|--|--------------|------|---------|------|--------------------|------|
| CENTRAL-PENN | 273,570 | 5.4 | 219,400 | 5.2 | 25 ¹ | 6.5 |
| PROVIDENT | 495,778 | 9.7 | 411,317 | 9.9 | 32 ¹ | 8.4 |
| Resulting bank | 769,348 | 15.1 | 630,717 | 15.1 | 57 | 14.9 |
| <i>Philadelphia</i> | | | | | | |
| The First Pennsylvania Banking and Trust Company | 1,027,612 | 20.2 | 957,077 | 22.9 | 49 | 12.8 |
| The Philadelphia National Bank | 897,052 | 17.6 | 792,379 | 19.0 | 37 | 9.7 |
| Girard Trust Bank | 825,394 | 16.2 | 626,585 | 15.0 | 50 ¹ | 13.1 |
| Fidelity-Philadelphia Trust Company | 653,906 | 12.8 | 494,621 | 11.8 | 49 ¹ | 12.8 |
| Frankford Trust Company (nonmember) | 60,380 | 1.2 | 44,002 | 1.0 | 5 | 1.3 |
| Six other commercial banks ² | 30,657 | 0.6 | 24,864 | 0.6 | 8 | 2.1 |
| <i>Delaware County</i> | | | | | | |
| The Delaware County National Bank, Chester | 84,422 | 1.7 | 50,793 | 1.2 | 9 | 2.4 |

¹ Includes one office approved but not open.

² Includes the Philadelphia office of Brown Brothers Harriman & Company, New York. As of June 30, 1965, this company had deposits of \$268 million.

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| Name of bank | IPC deposits | % | Loans | % | Banking Offices | % |
|---|--------------|-------|-----------|-------|--------------------|-------|
| <i>Montgomery County</i> | | | | | | |
| Continental Bank and Trust Company, Norristown (nonmember) | 293,974 | 5.8 | 238,736 | 5.7 | 38 | 10.0 |
| Industrial Valley Bank and Trust Company, Jenkintown (nonmember) | 141,106 | 2.8 | 108,075 | 2.6 | 24 | 6.3 |
| Ten other commercial banks | 194,225 | 3.8 | 136,078 | 3.3 | 40 | 10.5 |
| <i>Bucks County</i> | | | | | | |
| Bucks County Bank and Trust Company, Perkasie | 24,737 | 0.5 | 16,424 | 0.4 | 4 | 1.0 |
| Seven other commercial banks | 93,094 | 1.7 | 56,833 | 1.4 | 12 | 3.1 |
| | 5,095,907 | 100.0 | 4,177,184 | 100.0 | 382 | 100.0 |

Currently, Provident is the fifth largest bank in the Philadelphia four-county area in terms of IPC deposits and loans, and it ranks sixth in terms of banking offices. Central-Penn ranks seventh in these three categories. If the proposed merger is consummated, the resulting bank would rank fourth in size based on IPC deposits, third in size based on loans, and first in size based on the number of banking offices. In addition to having the most offices, the geographical coverage of such offices in the four-county area would be the most thorough and extensive of the area banks. With regard to the trust department, Provident currently ranks fourth behind First Pennsylvania, Girard, and Fidelity in the value of assets held and, if the merger is consummated, it would still rank fourth in the value of assets held although it would be first in the number of individual accounts under administration. Concerning the Philadelphia area, the resulting bank, with its increased lending limit and its branch system enlarged, would be in a position to compete more effectively with the three largest Philadelphia banks; namely, The First Pennsylvania Banking and Trust Company, The Philadelphia National Bank, and Girard Trust Bank.

There has been a significant decline in the number of banks headquartered in Philadelphia in the past several years. In June of 1952, there were 32 commercial banks in Philadelphia, compared to 13 at the present time. Consummation of the proposed transaction would further this trend.

The five largest banks in Philadelphia now hold about 77 per cent of the total IPC deposits held by commercial banks in the Philadelphia four-county area. This latter percentage would be increased to 82 per cent if the proposed transaction is consummated. As noted in the above schedule, the bank resulting from this proposed transaction would hold about 15 per cent of the IPC deposits held by banks in the Philadelphia four-county area and rank fourth in this respect. The three largest banks would hold approximately 20 per cent, 18 per cent, and 16 per cent, respectively, with the fifth largest bank holding about 13 per cent. In this respect,

it should be noted that the structure of commercial banking in the Philadelphia four-county area is not unduly concentrated as compared with the nation's major standard metropolitan statistical areas. As of June 30, 1964, the largest bank in the area controlled 21.8 per cent of the area's commercial bank deposits. In only 14 of 84 other major metropolitan areas did the largest bank have a smaller market share. The three largest Philadelphia banks' share was 54.7 per cent; only 16 major SMSA's had lower 3-bank concentration ratios.*

According to the application, "In the field of wholesale banking, all Philadelphia commercial banks operate in the shadow of New York." The application also states:

"Additional outside competition is encountered from the larger Pittsburgh banks, particularly the Mellon National Bank and Trust Co. and the Pittsburgh National Bank. The Mellon bank is substantially larger than the largest Philadelphia bank. Like the New York banks, the Pittsburgh banks regularly send representatives to solicit business in Philadelphia."

As an indication of some of the competition with banks outside the metropolitan area, the application notes that of 78 customers of Central-Penn with formal confirmed commercial lines of credit—totaling approximately \$91,000,000—approximately 59 per cent of the customers (58 per cent of the total amount) are customers also having lines from banks outside the Philadelphia area. Corresponding percentages for 341 such customers of Provident, with lines totaling approximately \$343,000,000, were approximately 44 per cent and 60 per cent.

* As regards the entire Philadelphia Standard Metropolitan Statistical Area, on June 30, 1964, the largest bank in the area controlled 19.3 per cent of the area's commercial bank deposits. In only 8 of 84 other major metropolitan areas did the largest bank have a smaller market share. The three largest Philadelphia banks' share was 48.3 per cent; only 11 major SMSA's had lower 3-bank concentration ratios.

Further competition is offered in the Philadelphia area by 4 mutual savings banks, which have more than 50 branches in the metropolitan area, savings and loan associations, which are said to be in direct competition with commercial banks in all areas, 300 life insurance companies, 285 credit unions, 100 sales finance companies, 300 small loan and consumer discount companies, 15 factoring companies, and direct lending agencies of the Government.

V. CONCLUSION WITH RESPECT TO COMPETITIVE FACTORS

Consummation of the proposed merger of Central-Penn National Bank of Philadelphia and Provident National Bank, Philadelphia, would eliminate significant competition existing between the banks, particularly in the downtown area of Philadelphia where each bank has its head office and several branches. In addition, the proposed transaction would eliminate 1 of 13 banks headquartered in Philadelphia, in which city there has been a substantial decline in the number of banks during the past several years.

The overall effect of the proposed merger on competition would be significantly adverse.

NOTE

As required by section 18(c) of the Federal Deposit Insurance Act, this report is limited to "a report on the competitive factors involved," and is not a recommendation as to whether the application should be approved or disapproved.

**ADVISORY REPORT OF
THE DEPARTMENT OF JUSTICE**

**DEPARTMENT OF JUSTICE
WASHINGTON 20530****January 7, 1966**

Honorable James J. Saxon
Comptroller of the Currency
Treasury Department
Washington, D. C.

Dear Mr. Saxon:

This is in response to your letter of December 7, 1965, which requested a report pursuant to the provisions of Section 18(c) of the Federal Deposit Insurance Act with respect to the proposed merger of Central-Penn National Bank of Philadelphia, Philadelphia, Pennsylvania (Central-Penn) and Provident National Bank, Philadelphia, Pennsylvania (Provident).

Central-Penn adopted its present name in 1930 upon the merger of Central National and Penn National Banks. Its 24 banking offices in operation are located in Philadelphia County and the contiguous counties of Bucks, Delaware and Montgomery, the maximum area permissible under Pennsylvania law for a bank based in Philadelphia. On September 30, 1965, Central-Penn held total assets of \$370 million, total loans of \$226 million and total demand deposits of \$224 million. Central-Penn's net current operating income for the past five years has averaged \$4.3 million.

Provident was incorporated in 1922 "to take over the banking, trust and other fiduciary business of Provident Life and Trust Company." As of September 30, 1965, Provident held total assets of \$699 million, total gross loans of \$412 million and total demand deposits of \$443 million. Provi-

dent's net current operating income has shown a steady increase for the past four years from \$9.5 million in 1961 to \$10.4 million in 1964. Provident's 32 banking offices are located throughout Philadelphia, Bucks, Delaware and Montgomery Counties.

The Market for Banking Services

It is generally accepted that the relevant market for most banking services is limited to local geographic areas. These normally refer to metropolitan areas, but with some important modification. The area within which banks can legally open branch offices has been demonstrated to be a relevant consideration. For example, state boundaries distinguish banking markets from one another because of the prohibition against branching across state lines.

In the *Philadelphia National Bank* case, 374 U.S. 321, 359-62 (1963), the Supreme Court concluded "that the four-county Philadelphia metropolitan area, which state law apparently recognizes as a meaningful banking community in allowing Philadelphia banks to branch within it, and which would seem roughly to delineate the area in which bank customers that are neither very large nor very small find it practical to do their banking business, is a more appropriate 'section of the country' in which to appraise the instant merger than any larger or smaller or different area." (374 U.S. at 361)

This view of the relevant market should be contrasted to that used in the application, where two diametrically opposite market definitions are set forth in order to justify this merger. It postulates both very large and very small market areas. First, to negate *inter se* competition between Provident and Central-Penn, the Application presumes that the relevant market is limited by the proximity of branch offices. Secondly, to minimize the high concentration among Philadelphia banks, the Application includes all banks within the Philadelphia Standard Metropolitan Statistical Area, which is comprised of five Pennsylvania counties and three New

Jersey counties. This is done in spite of the fact that Philadelphia-based banks can only branch in four of these eight counties.

Market Concentration

Our calculations of market concentration include all banks (as listed in the Application) with head offices in the four-county area (Philadelphia, Bucks, Delaware and Montgomery) within which Philadelphia-based banks may branch. This results in 33 banks with head offices in the relevant four-county trade area. The respective shares held by the largest seven of these banks are reported in the following table:

Market Shares in the Philadelphia Banking Market

June 30, 1965

| <i>Banks</i> | <i>Total Assets</i> | | <i>Total Demand Deposits (IPC)</i> | | <i>Total Gross Loans</i> | |
|-----------------|---------------------|-------------|--|-------------|------------------------------|-------------|
| | <i>\$ million</i> | <i>%</i> | <i>\$ million</i> | <i>%</i> | <i>\$ million</i> | <i>%</i> |
| First Penna. | 1,564 | 21.3 | 627 | 20.0 | 924 | 22.4 |
| Phila. Natl. | 1,408 | 19.2 | 548 | 17.4 | 733 | 17.8 |
| Girard | 1,055 | 14.4 | 469 | 14.9 | 628 | 15.2 |
| Fidelity-Phila. | 850 | 11.6 | 368 | 11.7 | 480 | 11.6 |
| PROVIDENT | 683 | 9.3 | 326 | 10.4 | 398 | 9.7 |
| CENTRAL-PENN | 369 | 5.0 | 170 | 5.4 | 210 | 5.1 |
| Continental | 366 | 5.0 | 185 | 5.9 | 228 | 5.5 |
| | <u>6,295</u> | <u>85.8</u> | <u>2,693</u> | <u>85.7</u> | <u>3,601</u> | <u>87.3</u> |
| 26 Others | 1,054 | 14.3 | 448 | 14.3 | 522 | 12.7 |
| Totals | 7,349 | 100.0 | 3,141 | 100.0 | 4,123 | 100.0 |

Source: The Application to Merge.

This proposal would combine the fifth largest (Provident) with the sixth largest (Central-Penn). The resulting bank would control 14.3% of total assets, 15.8% of IPC demand deposits, and 14.8% of bank loans in the four-county area, and would be the third or fourth largest bank within this market area.

For several years past there has been a definite merger trend among Philadelphia area banks. The Supreme Court noted the decline in the number of banks headquartered in the four-county area from 108 in 1947 to 42 at the time of the decision. (374 U.S. at 331) If the proposed merger is consummated, the number of banks will be reduced to 32. This area is, moreover, already highly concentrated, with the seven largest banks together holding approximately 86% of total assets, 86% of IPC demand deposits, and 87% of total bank loans.

Conclusions

As can be seen from the previous statistics, this merger is a strictly horizontal affiliation which leads to considerably higher levels of concentration. Concentrated market structures, moreover, are likely to be crucial factors which contribute to the exercise of market power. There are strong reasons, therefore, for believing that the proposed merger would have an important adverse effect on the extent of competition within the Philadelphia banking market. In addition, it should be noted that these banks are already quite large and there are few gains to be derived from further increases in size. It appears, thus, that the anticompetitive effects of this merger are important and considerable and that there are likely to be no redeeming features.

A summary of this report is attached.

Sincerely yours,

DONALD F. TURNER
Assistant Attorney General
Antitrust Division

SUMMARY OF THE REPORT OF THE DEPARTMENT OF JUSTICE ON THE COMPETITIVE FACTORS INVOLVED IN THE PROPOSED MERGER OF CENTRAL-PENN NATIONAL BANK OF PHILADELPHIA, PHILADELPHIA, PENNSYLVANIA, AND PROVIDENT NATIONAL BANK, PHILADELPHIA, PENNSYLVANIA

There is considerable evidence that Philadelphia plus the three contiguous counties within Pennsylvania comprise the relevant geographic market for banking services. This proposal would combine the fifth largest (Provident) and the sixth largest (Central-Penn) of the 33 banks with head offices located in this four-county area (Philadelphia, Bucks, Delaware and Montgomery Counties). The resulting bank would control 14.3% of banking assets, 15.8% of IPC demand deposits and 14.8% of total bank loans outstanding. It would be the fourth largest bank with headquarters in the four-county area. This area is already highly concentrated with the seven largest banks together holding approximately 86% of total assets, 86% of IPC demand deposits and 87% of bank loans originating in the area.

This merger is a strictly horizontal affiliation which leads to considerably higher levels of concentration. There are strong reasons, thus, for believing that the proposed merger would have an important adverse effect on competition within the Philadelphia banking market. The anticompetitive effects of this merger are important and considerable and there are likely to be no redeeming features.

**DECISION OF THE OFFICE OF THE COMPTROLLER
OF THE CURRENCY ON THE APPLICATION TO
MERGE CENTRAL-PENN NATIONAL BANK OF
PHILADELPHIA, PHILADELPHIA, PENNSYLVANIA,
AND PROVIDENT NATIONAL BANK, PHILADEL-
PHIA, PENNSYLVANIA, UNDER THE CHARTER OF
THE FORMER AND WITH THE TITLE OF PROVIDENT
NATIONAL BANK**

STATEMENT

On December 6, 1965, the Central-Penn National Bank of Philadelphia, Philadelphia, Pennsylvania, and the Provident National Bank, Philadelphia, Pennsylvania, applied to the Office of the Comptroller of the Currency for permission to merge under the charter of the former and with the title of Provident National Bank.

This application to merge is the first filed by banks of significant size to be acted upon by this Office since the passage of the 1966 Amendment to the Bank Merger Act. The new law, passed by Congress to moderate the decisions of the Supreme Court in *U.S. v. Philadelphia National Bank, et al.*, 374 U.S. 321 (1963) and *U.S. v. Lexington* 376 U.S. 665 (1964), recognizes that traditional anti-trust concepts cannot be applied to banking without substantial modification. If a realistic view is to be taken, it must start with a rejection of the traditional anti-trust concepts which Congress has recognized to be inapplicable to the banking industry. Congress, relying on the specialized knowledge of the banking agencies, has given them the task of interpreting the new statutes.

The significant provisions controlling agency action on a bank merger application are set forth in Section 5(B) of the new Act.¹ This section permits the responsible agency to balance the convenience and needs of the community, con-

¹ Section 5(A), which provides that the responsible agency shall not approve a bank merger which would result in a monopoly or constitute an attempt to monopolize the business of banking, is not applicable in this case.

sidering the managerial and financial resources of the participating banks and the resulting bank, which the merger will serve against the anti-competitive effect the merger may produce. If the convenience and needs of the community to be served clearly outweigh the anti-competitive aspects, the merger must be approved.

The first question to be considered, therefore, is the impact of the proposed merger on competition. Competition among financial institutions, as in other industries, must exist in a certain market referred to in the statute as a "section of the country." The extent of this market is dependent upon the various services provided by financial institutions. While virtually all banks and other financial institutions compete on the local neighborhood basis for the deposits of the average householder, only the larger institutions can successfully compete in the national market for the large credits of industrial and commercial customers doing business throughout the nation. Only a limited number of American banks compete in the international market. Thus, in this case, as in every other to arise under the new law, the extent and degree of competition among the applicant banks and other financial institutions must be evaluated in all its aspects. It no longer suffices to say that since some competition among banks, either actual or potential, is eliminated, the merger is to be condemned.

Although both Provident National Bank and Central-Penn National Bank, the participants in this proposal, are headquartered in Philadelphia and both operate branch bank systems in the four-county area comprised of Philadelphia, Bucks, Delaware and Montgomery Counties, as is permitted by state statutes, this area does not constitute the "section of the country" under the new statute. Although the Supreme Court in the Philadelphia case ruled that this four-county area was the relevant market, when interpreting Section 7 of the Clayton Act, the new statute, designed to modify that decision, permits a new and realistic approach. Money, either in the form of savings, deposits, or credits,

moves with great ease and rapidity; its flow is not impeded by political boundary lines. The movements of money in and out of a bank are determined by the convenience and needs of its many and varied customers, whose scattered addresses serve to define the extension of the bank's market. Thus, the branch banking laws of the states do not effectively define a bank's market. In this case, while it is proper to examine competition among branches for local retail and household deposits, it is also necessary to view total competition among all financial institutions in the Philadelphia area, including the adjacent sections of New Jersey, as well as in the northeastern part of the United States.

The proximity of New York City, the Nation's financial center, means that the Philadelphia banks also face strong competition from New York banks. Judge Clary, in his District Court opinion in the *Philadelphia* case, stated then, as is still more clearly the case today, that:

The evidence demonstrated beyond peradventure of doubt that the Philadelphia area, plus parts of Delaware and New Jersey, and also New York City, as well as most of the northeastern part of the United States, is the area of active competition for Philadelphia commercial banks and for the proposed merged bank. The testimony discloses that the competitive effect upon all Philadelphia commercial banks will be minimal. The larger bank, however, will be able to compete on better terms and in a better atmosphere with the banks of other cities and states that have been draining this area of banking business which might well be and perhaps properly should be handled here, and which cannot be handled under present circumstances. That it will benefit the city and area has been established clearly by a fair preponderance of the evidence.

Though Section 5(b) of the 1966 Amendment to the Bank Merger Act bears some resemblance to Section 7 of the Clayton Act, the difference is most marked in that the new bank

merger statute makes no reference to "line of commerce." The new statute allows consideration of a bank merger in the context of all competing financial institutions operating in the market. It is thus much more realistic than the narrow *Philadelphia* rule. Henceforth, the competitive impact of a bank merger must be assessed in the light of savings banks, insurance companies, savings and loan associations, credit unions, finance companies, small loan companies, factors, and even department stores and mail order houses, that compete for the credit lines or the savings dollar of the public.

The Provident National Bank and the Central-Penn National Bank, respectively the fifth and seventh largest commercial banks in Philadelphia, serve a standard metropolitan statistical area which is the second in size in the eastern United States. The Philadelphia standard metropolitan statistical area is comprised of Philadelphia County, which is coextensive with the city, Bucks, Chester, Delaware and Montgomery Counties in Pennsylvania, as well as Burlington, Camden and Gloucester Counties in New Jersey. This area, an important segment in the rapidly expanding megalopolis of the eastern seaboard, has an estimated population of 4,300,000 people. More than 25,000,000 people live within 100 miles of Philadelphia. Only by evaluating this proposed merger against the social, economic and financial resources at work in this vast and densely populated area can its impact be assessed. Its competitive effect must be viewed in the light of the overall financial structure of this area; its beneficial effect upon convenience and needs of this area must be seen in the perspective of the commercial, industrial, cultural and sociological composition of the area.

A comprehensive view of the Philadelphia area economic base reveals that it is comprised not only of many large, medium-sized and small industrial companies but also of a wide range of wholesale and retail establishments and service companies in addition to educational, governmental and research facilities. The 1963 U.S. Department of Commerce Census of Business gives the following statistics for the

Philadelphia area: 8,125 manufacturing plants with a total payroll of \$3,320,970,000 and value added of \$5,987,310,000; 7,476 wholesale establishments with a payroll of \$530,541,000 had sales of \$10,252,356,000; 39,358 retail stores with a payroll of \$666,822,000 had sales of \$5,737,442,000; and 22,809 selected service establishments with payrolls of \$321,010,000 had receipts of \$1,074,494,000.

This highly diversified Philadelphia area economy presents needs for the widest possible range of banking services. Nearly 90% of all classes of manufacturing output as recognized by the U.S. Department of Commerce are represented in this metropolitan area. The proportion of the nation's value added in five major industries by Philadelphia-based companies is as follows: petroleum and coal, 5.8%; apparel, 5%; chemicals, 4.6%; rubber and plastics, 4.4%; and fabricated metals, 5.1%.

The significance of manufacturing to the Philadelphia area is attested by the fact that some 35% of all gainfully employed workers are on the payrolls of manufacturing plants. The employment profile of the area is as follows: manufacturing durable, 17.3%; manufacturing non-durable, 17.6%; trade, 19.8%; service and miscellaneous, 15.2%; government, 12.9%; transportation and utilities, 7%; finance, insurance, and real estate 5.5%; and construction 4.7%.

Though manufacturing is especially important to the Philadelphia area, no single segment dominates its economy. Only two industries, electrical machinery and apparel, account individually for more than 10% of manufacturing employment. In the electrical equipment field the presence of Electric Storage Battery, I-T-E Circuit Breaker Co., International Resistance and Progress Manufacturing together with major establishments of Radio Corporation of America, General Electric, Burroughs, Philco, Sperry Rand and Westinghouse make this area one of the world's greatest concentrations of electrical and electronics manufacturing plants. In the apparel field, the area's second largest manufacturing industry, there are a great many small, independently op-

erated firms among which are many with a long history in the business.

Other manufacturing industries contribute to the prosperous economic base of this area. There are some 700 metal manufacturers, such as Lukens Steel and Alan Wood Steel. U. S. Steel also maintains its famous Fairless Works in this area. The Budd Company, long a leading supplier of transportation equipment, is expanding its local operations to include work in metallurgy, electronics and plastics. Pennsylvania Sugar and Franklin Sugar make the area a leader in sugar refining. Leeds and Northrup, a local firm, manufactures instruments here, as do plants of Honeywell. Chilton and Curtis are great names in publishing. Scott Paper is a Philadelphia-based national leader in the paper industry. SKF Industries makes bearings and has major plants here. Campbell Soup has its headquarters just across from Philadelphia, in Camden, New Jersey. Much of the manufacturing potential of the Philadelphia area is directed to the production of military supplies and national defense material.

Philadelphia is the site of a United States Mint and a center for other civilian federal functions, as well as for activities of the Commonwealth of Pennsylvania.

The wholesale and retail trades employ 19.8% of the area workers and account for \$15.990 billion in annual sales. Two of the nation's ten largest merchandising firms, Acme Markets, with annual sales of \$1.161 billion, and Food Fair Stores, with annual sales of \$1.105 billion, are among this number.

In the petro-chemical industry, the Philadelphia complex ranks second in the nation. The two locally headquartered firms in the oil area are Atlantic Refining, with \$636 million in annual sales, and Sun Oil, with \$838 million in annual sales. Other oil producing and processing firms with plants in the area are Gulf, Mobil and Sinclair, which are among the country's largest. The chemical industry located in the area has grown spectacularly between 1958 and 1962 when its value added increased 35% and its employment increased

12%. Recent plant and equipment investments by such firms as Rohm and Haas, Pennsalt, DuPont and Thiokol indicate the vitality of this industry. Pharmaceutical plants, a specialized chemical industry, have also contributed to Philadelphia's recent growth. The Smith, Kline and French Laboratories, and William H. Rorer have recorded excellent profits. Wyeth; Merck, Sharp and Dohme; McNeil, and other famous firms with manufacturing and research laboratories have contributed to the economy of the area.

The Philadelphia area has become a national center of research and development, especially in the bio-medical sciences and electronics, because of the close cooperation among industry, independent research institutions and the area's colleges and universities. A new Science Center, near the campuses of Drexel Institute of Technology and the University of Pennsylvania, will further foster and extend this cooperation. The Franklin Institute conducts industrial research in its independent laboratories in chemistry, physics, electronics and engineering. National Science Foundation data indicate that, in 1962, 3,700 scientists were engaged in research and development in the Philadelphia metropolitan area. Their efforts were concentrated in chemistry, physics, and the biological sciences.

Another very significant factor contributing to the economic base of the Philadelphia standard metropolitan statistical area is its seaport. This port, which is part of a vast complex stretching from Trenton, New Jersey, on the north to Wilmington, Delaware, on the south, serves thirteen states in which one-third of the nation's population lives and works. Having handled 108.9 million short tons in 1964, it ranks second only to New York in total water-borne commerce and is first in foreign commerce. Its importance to the economy of the area can hardly be exaggerated; it provides, directly or indirectly, more than 96,000 jobs and 20% of all manufacturing jobs depend on raw materials received through the port.

The port can accommodate 150 deep-draft vessels at its docks, and a 40-foot channel has been dredged up river to the

U.S. Steel Fairless plant. Three trunk line railroads run direct to shipside and are interconnected by the Philadelphia Belt Line Railroad. Over-the-road service to all parts of the United States and Canada from this port is furnished by approximately 350 motor truck lines. The port has three ore piers with unloading capacity of 5,600 tons per hour; six oil docks with storage capacity of 9,900,000 barrels; two grain elevators with a capacity of $4\frac{3}{4}$ million bushels; three coal tipples with capacity of 37,500 tons per eight-hour day; eighty-one warehouses for general storage with 13.5 million square feet of space; and nine cold storage warehouses with nearly 12 million cubic feet of space.

Since colonial days educational, scientific and cultural activities have contributed to the economic vitality of Philadelphia and its environs. Today there are 54 colleges and universities, including six major medical schools and 129 hospitals, as well as many other respected scientific and cultural institutions serving the area's needs.

Philadelphia is also a major transportation center. Of the railroads serving the city, the Pennsylvania Railroad and the Reading Company are locally headquartered. The International Airport, located only twenty minutes from the center of the city, is becoming an attraction for new business development. Philadelphia is also served by a network of superhighways centering on the Pennsylvania and New Jersey Turnpike.

The City of Philadelphia faces severe problems typical of many American urban centers today. It has experienced a substantial exodus of population to the suburbs and those who moved out have been replaced mostly by unskilled immigrants from the south, who, due to their lack of training, are handicapped in finding employment. Efforts have been made by both government and private citizens to revitalize the economy of Philadelphia and a number of projects are presently in progress. In the field of housing, a massive plan has been set in motion to replace substandard housing facilities in the city. Steps are also being taken to improve cargo handling facilities.

Against this background of the Philadelphia area's manufacturing, commercial, scientific and cultural base, it is appropriate to examine the financial resources available to meet its expanding credit needs. Such an examination must, of necessity, encompass not only commercial banks but also the savings banks, savings and loan associations, insurance companies, small loan companies, credit unions, factors and other financial institutions.

Such an analysis of the Philadelphia area financial structure must consider the 84 commercial banks, operating 515 offices, with total assets of \$8.495 billion; four mutual savings banks having withdrawable balances of \$2.861 billion; 260 savings and loan associations with \$2.555 billion in total assets; 300 insurance companies, including seven large Philadelphia-based insurance companies with assets of \$3.846 billion; 285 credit unions in the city of Philadelphia alone; and about 100 sales finance companies, about 300 small loan companies, and 15 factoring offices, the aggregate Philadelphia resources of which are unavailable. Direct governmental lending agencies are competitive to a lesser extent than the private financial institutions.

Philadelphia, the fourth largest metropolitan area in the nation, has a relatively low concentration of banking resources. Out of 34 standard metropolitan statistical areas with limited branching, the Philadelphia area ranks only 25th in terms of concentration based on the five largest banks in each area.

Of the 84 commercial banks located in the Philadelphia area, only three have total deposits of more than one billion dollars. The largest of these is the First Pennsylvania Banking and Trust Company, which has total deposits of \$1.459 billion and operates 45 branch offices. The second is the Philadelphia National Bank, with deposits of \$1.292 billion and 36 offices. Girard Trust Bank, with \$1.013 billion in deposits and 50 branches, is third. None of these banks, which rank 19th, 26th, and 37th, respectively, among the nation's commercial banks, are near the size of the Mellon National Bank of Pittsburgh.

The charter bank, with IPC deposits of \$260 million, was originally organized in 1864 as the Central National Bank. It acquired its present title in 1930 when Central National Bank merged with Penn National Bank. During the last five years, however, it has had no mergers. The charter bank presently operates twenty-four offices throughout Philadelphia, Bucks, Montgomery, and Delaware Counties. Central-Penn has specialized in medium-sized local business loans and has built up over the years a strong and experienced commercial loan department. The bank needs additional capital to support its existing volume of business. Its head office is inadequate and congested. The renovated quarters of the resulting bank and its new accounting center will alleviate this problem.

The merging bank, with IPC deposits of \$471 million, was originally incorporated in 1922 as Provident Trust Company of Philadelphia to take over the banking and trust business of Provident Life and Trust Company; it became a national bank in 1964. The Provident National Bank is presently operating thirty-three offices throughout Philadelphia, Bucks, Montgomery, and Delaware Counties. Besides being a strongly capitalized bank, Provident has one of the largest trust departments in the Philadelphia area, as well as an established international division, and a specialized construction loan department. Among the remaining area banks, there are ten with resources of \$100 million and over, which assure a satisfactory range of services to the medium-size customer.

Commercial banks compete not only with each other, but with many other types of savings and financial institutions strongly represented in the area. There are four mutual savings banks with head offices in Philadelphia operating more than 50 branches in the metropolitan area and having withdrawable balances of \$2.861 billion. These institutions are well managed, with records of sound operation dating from 111 to 149 years. The Philadelphia Savings Fund Society, the major savings bank, is the largest bank in Eastern

Pennsylvania. These mutuals have paid a high rate of interest on regular savings accounts, which has contributed much to the amazing growth rate of their savings deposits of 51.9% over 1960.

Insured savings and loan associations, with \$2.555 billion in total assets, compete vigorously in the metropolitan area for personal savings and also solicit corporate funds. Emphasizing the savings function, the high dividend rate, federal insurance and, frequently, valuable premiums on new accounts, they successfully compete with mutual savings and large commercial banks for savings and mortgage loans. There is no area in the city where the commercial banks are not in direct competition with a nearby office of a savings and loan association. Moreover, many out-of-state savings and loan associations from as far away as California solicit deposits by mail, emphasizing the high interest rates offered. First Pennsylvania cited the drain of deposits resulting from such out-of-state competition as a principal reason for its recent decision to offer five-year, 4½% savings bonds, now also offered by most other Philadelphia banks. It is significant that savings deposits and mortgage loans of the eight largest Philadelphia commercial banks amounted in the aggregate to only 16.94% and 6.99%, respectively, of the combined totals for such banks, the four mutual savings banks, and the insured savings and loan associations in the area as of December 31, 1964.

There are more than 300 insurance companies with offices in the city. The seven largest insurance companies with headquarters in Philadelphia are: Pennsylvania Mutual Life, with assets of \$2,068,973,000, mortgage loans of \$625,256,000, and policy loans of \$140,358,000; Provident Mutual Life, with assets of \$989,936,000, mortgage loans of \$328,387,000 and policy loans of \$58,626,000; Fidelity Mutual Life, with assets of \$442,770,000, mortgage loans of \$146,061,000, and policy loans of \$30,216,000; Philadelphia Life, with assets of \$109,355,000, mortgage loans of \$36,822,000 and policy loans of \$6,646,000; Presbyterian Ministers' Fund, with assets of

\$95,760,000, mortgage loans of \$19,098,000 and policy loans of \$6,428,000; Home Life, with assets of \$95,338,000, mortgage loans of \$45,612,000 and policy loans of \$3,039,000; and Life Insurance Company of North America, with assets of \$44,716,000, mortgage loans of \$7,660,000 and policy loans of \$1,354,000. The three largest companies have been very active in private placement financing; they are joined in competition for local financing by all of the leading national life insurance companies and many Canadian companies as well. All of these and many smaller companies actively solicit real estate mortgages for investment. Some companies maintain their own mortgage offices in Philadelphia while others rely upon local mortgage service companies for their supply.

There are reported to be 285 credit unions in the urban Philadelphia area. There are no statistics on the number of credit unions in the entire metropolitan area. Credit unions make the most of their competitive position, emphasizing mutual ownership, low interest rates on loans, in some cases the payroll deduction method of loan repayment and savings, and convenience of access to credit union facilities.

There are about 100 sales finance companies and about 300 small loan and consumer discount companies operating within the service area of the resulting bank. Many of these companies have large branch office systems. Beneficial Finance Companies have 14 offices, Household Finance Corporations have 26 offices, and Ritter Finance Companies have 18 offices. All of these companies compete aggressively with commercial banks for automobile, home modernization, and personal loan financing.

There are 15 factoring companies with offices in the city of Philadelphia. These companies compete in the accounts receivable finance market.

The consummation of the proposed merger will not result in the elimination of a significant amount of competition between the applicant banks. Provident and Central-Penn face branch office competition from the offices of the largest

Philadelphia banks rather than from each other, except in the immediate Philadelphia downtown area. For this reason, a minimal number of common accounts exists between them. There are only 28 mutual customers out of a combined total of 3,277 savings accounts with balances of \$10,000 or more; nine mutual holders of the new 4½% savings certificates of each bank out of a total of 2,512 accounts; eight mutual depositors out of 444 with certificates of deposit; and four mutual customers with open time deposit balances in excess of \$10,000 out of 281 accounts. A comparison of all regular checking accounts with balances of \$10,000 or more in each bank disclosed only 139 mutual accounts out of 6,614, and a comparison of loan balances of \$10,000 or more for each bank disclosed only 32 mutual borrowers out of 3,287. As to consumer credit customers of the two banks, due to the complementary branch systems and differences in the sources of dealer paper, it is doubtful that more than an insignificant overlap is involved.

The following analysis of the dispersion of the branch offices of the applicant banks clearly reveals the limited extent to which the banks compete for the deposits of the small retail customers. As previously noted, Pennsylvania law permits branching into the counties contiguous to the home county, and while both banks operate branch offices in Philadelphia and at least one office in each of the three contiguous counties, the locations of these offices are such that, except in the downtown area, they are not in significant competition with each other. Of the twenty-four offices Central-Penn presently operates throughout this four-county area, thirteen are located in Philadelphia: four downtown, three to the north of the downtown area, four to the west, and two to the south. Provident is presently operating thirty-three offices in the four-county area, twenty of which are located in Philadelphia: five downtown, one immediately outside of the downtown area, eleven north of the downtown area, two west, and one south. In Delaware County, Provident is well represented with six offices, while Central-Penn has but one. On

the other hand, Central-Penn has eight offices in Lower Bucks County, while Provident has two offices in Upper Bucks County. In Montgomery County, Provident has five offices, two in the southwest section, two in the northeast section and one in the west-central part, while Central-Penn has only two offices in the southeastern section of the county. Subsequent discussion will show that the participating banks' branches in these last three counties do not compete with each other because of their locations. These branches, in fact, will complement one another when the merger is consummated.

In downtown Philadelphia, the main office of Central-Penn is located at the corner of Broad and Walnut Streets, only a block away from the main office of Provident at the corner of Broad and Chestnut Streets. Within .4 of a mile of Provident's office are eight commercial banks, some with several offices; two savings banks; one savings and loan association; ten finance and small loan companies; four credit unions; and twelve insurance companies. Central-Penn's office is within .3 of a mile of eight commercial banks, one savings bank, six savings and loan associations, twenty-six finance and small loan companies, two credit unions, and two insurance companies.

Competition also exists among the branch offices of the two banks located at 21 South 12th Street, 12th and Chestnut Streets, and Market and Juniper Streets. These offices are in the same area. However, within .3 of a mile from Provident's office at 21 South 12th Street are five commercial banks, three savings banks, two savings and loan associations, ten finance and small loan companies, and four credit unions. Central-Penn's office at 12th and Chestnut Streets is within .5 of a mile of four commercial banks, two savings banks, six savings and loan associations, sixteen finance and small loan companies, three credit unions, and one insurance company. Within .4 of a mile from Central-Penn's office at Juniper and Market Streets are three commercial banks, a savings bank, three savings and loan associations, six finance and small loan companies, and two insurance companies.

No significant competition exists among any of the other branch offices of the applicant banks, although a few of these are relatively close to each other.

Offices of the two applicant banks located in downtown Philadelphia at 17th and Arch Streets, and at 17th and Chestnut Streets are separated by three long blocks traversing Penn Center, an office redevelopment area. Within .3 of a mile from Provident's office are nine commercial banks, three savings banks, twelve savings and loan associations, five finance and small loan companies, and one credit union. Central-Penn's office is within .3 of a mile of six commercial banks, three savings banks, one savings and loan association, four finance and small loan companies, three credit unions, and two insurance companies.

Other branch offices of the applicants in downtown Philadelphia, which are located in the same area, are those at 7th and Chestnut Streets and at 4th and Chestnut Streets. All the major banks are represented in this section. Within .3 of a mile from Central-Penn's office located at 7th and Chestnut Streets are three commercial banks, a savings bank, three savings and loan associations, three finance and small loan companies, two credit unions, and nine insurance companies. Provident's office located at 4th and Chestnut Streets is within .3 of a mile of seven commercial banks, three savings and loan associations, one finance and small loan company, two credit unions, and one insurance company.

The office of Central-Penn, located at 2nd and Pine Streets, is seven blocks away, and separated by the Independence National Historical Park, from Provident's office located at 4th and Chestnut Streets. No competition exists between the two offices because of the distance, difference in neighborhood and the barrier created by the park. The draw area of the 2nd and Pine office is principally South Philadelphia rather than downtown Philadelphia. Within a mile from Central-Penn's office are three commercial banks, a savings and loan association, and one finance and small loan company.

In heavily populated West Philadelphia, Central-Penn's office at 58th Street and Baltimore Avenue and Provident's office at 19 South 52nd Street are 1.5 miles apart and thus have separate service areas. Within one mile of Central-Penn's office are three commercial banks, one savings and loan association, and two finance and small loan companies. Provident's office is within 1.3 miles of three commercial banks, two savings banks, five savings and loan associations, seven finance and small loan companies, four credit unions, and one insurance company.

In North Philadelphia, the office of Central-Penn at Broad Street and Glenwood Avenue and the office of Provident at 3314 Germantown Avenue are .7 of a mile apart and are separated by the main tracks of the Pennsylvania Railroad and by Allegheny Avenue, a major thoroughfare. Central-Penn's office serves the area south of these boundaries and is within .6 of a mile of two commercial banks; a savings bank, three savings and loan associations, four finance and small loan companies, and five credit unions. Provident's office, serving the business and population north of Allegheny Avenue and the railroad, is within .6 of a mile of four offices of two commercial banks, a savings bank, three savings and loan associations, and two finance and small loan companies.

Central-Penn's office at 5th and Wyoming Avenue and Provident's office at Broad and Loudon Streets are a mile apart and serve different areas which are separated by the Northeast Expressway. The Wyoming office of Central-Penn does not serve the area along Broad Street which is within the service area of the Broad and Loudon office of Provident. Likewise, the Provident's office does not serve the business along 5th Street south of Wyoming Avenue. Central-Penn's office is within one mile of three commercial banks, five savings and loan associations, five finance and small loan companies, and one credit union. Provident's office is less than .5 of a mile from one commercial bank, one savings bank, two savings and loan associations, four finance and small loan companies, and one credit union.

Central-Penn's office at 7325 Stenton Avenue and Provident's office at 78th Street and Ogontz Avenue are 1.75 miles apart. The road pattern of the area obviates competition between them. Central-Penn's office is within 1.5 miles of three commercial banks, two savings banks, and two savings and loan associations. Provident's office is within one mile of nine commercial banks, three savings banks, five savings and loan associations, one finance and small loan company, one credit union, and two insurance companies.

In Delaware County, the office of Central-Penn located at 301 Baltimore Pike, Springfield, and the office of Provident at Hart Lane and Saxer Avenue, Springfield, are approximately 1.2 miles apart. Within one mile from Central-Penn's office are four commercial banks, two savings and loan associations, two finance and small loan companies, and a savings bank. Provident's Springfield office is within 2.2 miles of six commercial banks, two savings banks, two savings and loan associations, four finance and small loan companies, and two credit unions.

In Montgomery County, the offices of Central-Penn located at King of Prussia Industrial Park, Upper Merion Township, and the office of Provident at King of Prussia Plaza, Upper Merion Township, are 1.2 miles apart. They are separated by the Pennsylvania Turnpike. Because of limited overpasses and underpasses, these offices are about 2.8 miles apart by either the eastern or western route. Driving this distance during rush hours can take from fifteen minutes to half an hour. Central-Penn's Industrial Park office cannot adequately serve the population drawn to the stores in the shopping center. Provident's office is within 1.75 miles of four commercial banks and two savings banks, and within .5 of a mile of a savings and loan association, and two finance and small loan companies.

In Bucks County there is no competition between the branches of the participating banks. While Provident has two offices in the upper part of the county and Central-Penn has eight in the lower part of the county, the closest offices are 18 road miles apart.

Thus it is evident that the overall competition among the branches of Provident and Central-Penn is not significant. It is pertinent, moreover, to note the kind of branching systems of other Philadelphia banks with which the merging banks must compete. Girard Trust, for example, presently has a total of 50 offices, which cover all sections of Philadelphia and its suburbs. According to Girard's 1965 annual report, "Close to two-thirds of all our deposits are now serviced at branch locations." It thus appears that Girard is handling a higher percentage of its deposits at its branches than is either Central-Penn or Provident.

Quite apart from a narrow consideration of the branching systems of the merging banks, the competitive structure is properly evaluated only when all the financial institutions which are competing for the savings and deposit dollars and the business, real estate, and personal loans are taken into consideration. It has already been shown that all of these financial institutions represent an impressive multiplicity of competitive units and resources. While figures are not available for the resources of all competing financial institutions, the figures that are available indicate that the pre-merger relative size of Provident is 3.93% of total financial institution resources and of Central-Penn is 2.09%. The post-merger relative size of the resulting bank will be 6.02%.² This post-merger relative size, while overstated because of lack of data from some competitors, will not cause, by any reasonable measure, a significant lessening of competition in the resulting bank's market.

This merger, on the contrary, will stimulate competition among the largest banks in the market area. As the Federal Reserve Board said in its decision on the Fidelity Philadelphia-Liberty Real Estate Bank merger in 1963, "the climate

² These relative size figures are based on the aggregate resources figures of the following financial institutions: mutual savings banks, \$2.861 billion; savings and loan associations, \$2.555 billion; insurance companies, \$3.847 billion; and commercial banks, \$8.495 billion. Provident has total resources of \$698.697 million and Central-Penn has resources of \$370.379 million.

of competition would be stimulated by the increased capacity of a large scale bank, and the range of choices available to customers who require services which can only be rendered by a larger bank would be increased."

We have shown that the competition which would be eliminated by this merger is minuscule. It is now pertinent to examine the procompetitive effect of the merger on the convenience and needs of the Philadelphia market.

The increased lending capacity of the resulting bank will benefit large banking customers through the creation of an additional source of very large loans. The close relationship between competition and convenience and needs of the community is thus demonstrated. The needs of these large customers are better met through the injection of added competition in the large loan market.

The combining of the computer systems of the applicant banks will yield a more efficient data processing operation. Provident, at present, has new data processing equipment on order to replace its present obsolescent equipment. These new computers will adequately take care of business in the foreseeable future. Central-Penn's computers have no backup capacity; this merger will solve the problem of this vulnerability. A direct access system, now being put into service by Central-Penn will enable the resulting bank to provide direct access to its computers from customers sooner than Provident could on its own. With its greater financial resources and larger operations to assume acquisition and start-up costs, the resulting bank will be better able to provide the public with the latest advances in data processing services.

Use of the recently renovated Provident main office by the resulting bank will not only increase its efficiency but will improve customer service. Further, it will eliminate the necessity of a substantial outlay by Central-Penn to obtain adequate headquarters. To do so, according to Central-Penn's preliminary estimate, its annual occupancy costs would increase \$250,000.

Decision of Comptroller

Since it has been shown that the branch systems of the merging banks are complementary, that an adequate number of alternative sources of financial services exist in the Philadelphia area and that competition among the large financial institutions will be stimulated, it is concluded that this merger, rather than having an overall adverse effect on competition, will have a favorable effect. Further, the increased ability of the resulting bank to serve the convenience and needs of the Philadelphia area by increased efficiency, by a greater lending capacity, through more adequate banking quarters, and by a generally improved quality of banking services makes this merger desirable. We would be hindering the economic growth of Philadelphia if we failed to give our approval to this merger application.

Pursuant to the 1966 Amendment to the Bank Merger Act, we find that the merger of Provident National Bank and Central-Penn National Bank clearly conforms to the statutory criteria and is in the public interest. The application is, therefore, approved.

JAMES J. SAXON
Comptroller of the Currency

Dated: March 31, 1966

C. PROCEEDINGS BEFORE DISTRICT COURT

Docket Entries

1966

- 1 Apr. 1 Complaint filed
- “ 1 Summons exit
- 2 “ 5 Answer filed
- “ 5 CASE LISTED FOR TRIAL.
- “ 6 Pre-Trial hearing in Chambers
Motion of Comptroller of Currency to intervene—
Formal order to be entered
- 3 “ 6 Motion of the Comptroller of the currency to
intervene as a party, filed.
- 3) “ 7 Order of Court granting motion of Comptroller of
the Currency for leave to intervene as a party, filed.
4-7-66 entered & counsel notified.
- 4 Apr. 13 Answer of Comptroller of Currency, filed.
- 5 “ 20 Plaintiff's interrogatories to defendants filed
- 6 “ 20 Plaintiff's motion for production of documents
and affidavit in support thereof filed
- 7 “ 20 Plaintiff's notice of motion for production of
documents filed
- 8 “ 20 Certificate of service filed
- 9 “ 28 Transcript of testimony before Clary, J., 4/6/66
filed
- 10 May 6 Plaintiff's interrogatories to defendants (Set
No. 2) filed
- 11 “ 13 Defendants' objections to plaintiff's interroga-
tories (Set No. 2) filed

- 12 May 19 Objections of James J. Saxon, Comptroller of the Currency, to plaintiff's interrogatories (Set No. 2) and certificate of service filed
- June 6 Hearing sur pre-trial order (Order to be entered)
- 13 " 7 Pre-trial order No. 1, Clary, Ch.J., filed 6/8/66 entered and copy to counsel
- 14 " 20 Transcript of pre-trial proceedings before Clary, Ch.J. filed
- 15 " 23 Summons returned "on 4/1/66 served" and filed
- 16 July 11 Plaintiff's pretrial brief filed
- 17 " 18 Plaintiff's pretrial brief filed
- 18 Aug. 9 Defendants' pretrial brief filed
- 19 " 9 Pretrial brief of the comptroller filed
- 20 " 9 Application of defendants to comptroller for approval to merge filed
- 21 " 9 Motion of intervenor comptroller to dismiss and notice of motion filed
- 22 " 10 Order fixing 8/31/66 at 10:30 a.m. for hearing re: motion to dismiss action, etc. filed 8/10/66 entered and copies mailed
- 23 " 22 Defendants' motion to dismiss filed
- 24 " 26 Brief of defendant banks in support of motions to dismiss filed by the intervenor and the defendants filed
- 25 " 26 Memorandum in support of intervenor's motion to dismiss filed
- 26 " 26 Plaintiff's brief in opposition to the comptroller's motion to dismiss filed

27 Aug. 26 Plaintiff's reply brief to the pre-trial briefs of the defendants and the comptroller filed

" 31 Hearing sur motion of intervenor to dismiss

28 Sept 6 Transcript of hearing 8-31-66, filed.

29 Sept 30 Plff's. motion for production filed.

30 " 30 Affidavit of John W. Neville in support thereof, filed.

31 " 30 Certificated of service by regular mail, filed.

32 Oct. 13 Plff's. interrogatories to deft. Banks filed.

33 " 13 Defts. answer to plff's. interrogatories filed.

34 " 13 Opinion Clary Ch. J. and Order that defendants' motion to dismiss and intervenor's motion to dismiss are DENIED and filed.

10-13-66 entered & notice mailed.

35 " 19 Deft'. Banks' motion for a protective order filed.

Oct. 26 Further pre-trial conference

The Court fixes Jan. 4, 1967 for trial and fixes Nov. 4, 1966 at 11 A.M. for hearing on discovery matters, etc.

36 Nov 1 Transcript of hearing 10-26-66 filed.

37 " 2 Comptroller's Brief on the weight to be ascribed the opinion of the regulatory Agency, filed.

38 " 2 Comptroller's Brief on the burden of pleading and proving convenience and needs, filed.

39 " 3 Plff's. memorandum in support of its Rule 34 motion for production of the Comptroller of the currency bank examiners reports, filed.

40 " 3 Memorandum of deft. Banks with respect to the weight to be given to the Comptroller's Approval, the burden of proof, and related matters, filed.

- Nov. 4 Hearing re discovery motions
- 41 " 7 Transcript of hearing 11-4-66, filed.
- Nov. 9 Discovery hearing resumed and concluded
- 42 " 21. Transcript of hearing on plff's. motion for production under rule 34, filed.
- 43 " 22 Opinion Clary, Ch. J., re: ruling on plff's. motion for production of documents under rule 34, filed.
- 11/23/66 entered and copies mailed.
- 44 " 30 Plff's. identification of witnesses, summary of evidence and statement of position, filed.
- 45 Dec. 2 Defendant Banks' motion for final judgment, notice thereof and exhibits in support thereof, filed.
- 46 " 6 Motion of intervenor for final judgment and notice thereof, filed.
- Dec. 12 Conference in Chambers
- 47 " 14 Deft. Banks' list of prospective witnesses, filed.
- 48 " 14 Intervenor's list of witnesses, filed.
- 49 " 20 Transcript of hearing in chambers 12/14/1966, filed.
- 50 Dec. 27 Intervenor's memorandum of law in opposition to plaintiff's motion for production of documents, filed.
- 51 " 29 Opinion, Clary, Ch. J. and Order DISMISSING the complaint with prejudice; the statutory stay of the merger is LIFTED and the banks may merge at a time to be determined by them, but not earlier than January 18, 1967, filed. 12-29-66 entered & notice mailed

1967

52 Jan. 10 Order that the Clerk of this Court turnover the entire record to a representative of the Attorney General of the U.S. for the purpose of having record lodged with the Clerk of the Supreme Court of the United States etc., filed.

1-10-67 entered & notice mailed

51½ " 10 Plff's. notice of appeal to the Supreme Court of the United States filed.

PRE-TRIAL ORDER NO. 1 OF DISTRICT COURT.

A pre-trial conference having been held on June 6, 1966, and counsel having been heard, and due deliberation having been had, it is ORDERED in the above action that:

1. Plaintiff shall file on or before July 8, 1966 a detailed written brief containing separately numbered paragraphs and setting forth:

(a) The facts which plaintiff expects to prove in support of each claim for relief, distinguishing between those facts which plaintiff contends, on the basis of the answers, answers to interrogatories, or otherwise, are admitted and those which are contested;

(b) The legal issues, contentions and supporting authorities relating to each claim for relief, including plaintiff's contentions as to the parties bearing the proof on each issue.

2. Defendants shall file on or before August 5, 1966 a detailed written brief containing separately numbered paragraphs and setting forth:

(a) The facts which defendants expect to prove in defense of each claim for relief, distinguishing between those facts which defendants contend, on the basis of the complaint, answers to interrogatories, plaintiff's brief or otherwise, are admitted and those which are contested;

(b) The legal issues, contentions, and supporting authorities relating to the defense of each claim for relief, including defendants' contentions as to the parties bearing the burden of proof on each issue.

3. Plaintiff shall file on or before August 25, 1966 a detailed written reply-brief containing separately numbered paragraphs and setting forth:

(a) The facts, if any, which plaintiff expects to prove in rebutting any affirmative matter raised by defendants in briefs filed pursuant to paragraph 2 hereof, distinguishing between those facts which plaintiff contends on the basis of the answers to interrogatories, defendants' briefs or otherwise, are admitted and those which are contested;

(b) The legal issues, contentions, and supporting authorities, if any, related to the rebuttal of any affirmative matter raised by the defendants in a brief filed pursuant to paragraph 2 hereof, including plaintiff's contentions as to the parties bearing the burden of proof on each issue.

4. Any factual issue, legal issue, contention, claim, or defense, not set forth in detail as provided in paragraphs 1, 2 and 3 shall be deemed abandoned, uncontroverted, or withdrawn in further proceedings, the pleadings and other papers on file herein to the contrary notwithstanding, but provided that nothing in this Order shall preclude any party from raising forthwith, by a supplemental brief, any issue, factual or legal, disclosed by any discovery taken after the filing of the pre-trial briefs, subject to the discretion of the Court.

BY THE COURT:

Thomas J. Clary
Ch. J.

Dated:
June 7, 1966

PRE-TRIAL BRIEF OF DEFENDANT BANKS.**I. INTRODUCTION**

1.1 The Government in its pretrial brief takes the position that this case "is *United States v. Philadelphia National* all over again, only that the names have been changed" (Par. 117). The Government ignores all that has happened since *Philadelphia National*. It ignores the enactment of the Bank Merger Act of 1966 designed to overrule a crucial holding of the Supreme Court in that case. It ignores the vast differences between this merger—which joins the two smallest reserve city banks in Philadelphia to form the fourth largest—and the merger under consideration in *Philadelphia National*—which would have combined the second and third banks to produce the largest bank in the City, half again as big as its nearest competitor. Because of the difference between the Government's approach and the defendant Banks' approach to the case, the Banks have felt it necessary in this brief to set forth their position affirmatively rather than merely to answer the Government's brief point by point. Exhibit A to this brief shows where the answers to the Government's principal points will be found in this brief and sets forth additional responses by the Banks.

1.2 This proceeding is not a routine antitrust case. It is governed, not by the Clayton Act, but by the Bank Merger Act of 1966, 80 Stat. 7. The Bank Merger Act of 1966 amends Section 18(c) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(c) to provide that:

(a) No insured bank¹ shall merge with any other insured bank except with the approval of the responsible regulatory agency (in this case the Comptroller of the Currency) (Subsection 2).

1. "Insured banks" include all commercial and savings banks insured by the FDIC, 12 U. S. C. § 1813(h).

(b) In deciding whether to approve a merger application, the Comptroller shall take into consideration in every case the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served (Subsection 5).

(c) The Comptroller shall also obtain advisory reports from the other banking agencies and the Attorney General as to the competitive factors involved in the proposed merger (Subsection 4).

(d) The Comptroller shall not approve a merger whose effect in any section of the country may be substantially to lessen competition unless he finds that the anticompetitive effects are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the community to be served (Subsection 5.)

(e) The Comptroller must notify the Attorney General of any approval of a bank merger under the Act, and the Attorney General has 30 days in which to bring an action under the antitrust laws. The commencement of such action automatically stays the effectiveness of the Comptroller's approval (Subsections 6 and 7).

(f) In any action brought by the Attorney General, the Comptroller may appear as a party and as of right (Subsection 7(D)).

(g) The court is directed to "review *de novo* the issues presented" and to apply the "identical" standards which the Comptroller was directed to apply in issuing the initial approval (Subsections 7(A) and (B)).

1.3 In the instant case the Comptroller found that the competition which would be eliminated by the merger of Provident and Central Penn is "miniscule" and that very

substantial benefits to the community are to be expected from the merger. He concluded that the merger clearly conforms to the statutory criteria and is in the public interest. Accordingly, he approved the application.² The Banks are filing with this brief an Appendix containing the Comptroller's decision, the advisory reports on competitive factors by the Federal Reserve Board and the Attorney General, and certain statutory provisions and statistics as to commercial banks in Philadelphia and nearby counties and communities.

1.4 The task of this Court under the Bank Merger Act of 1966 is to "review" the decision of the Comptroller of the Currency. It hears the evidence "de novo" (unavoidably since there was no hearing held before the Comptroller), but the judgment it must make is whether the Comptroller acted within the bounds of the discretion entrusted to him by the Bank Merger Act of 1966, not whether the Court approves of the merger and not whether the merger would violate Section 7 of the Clayton Act. In no other way can the Act be construed constitutionally since administrative determinations regarding the community needs for improved banking services and the effects of the merger in meeting these needs do not present a case or controversy within the judicial power under the Constitution. In no other way can the Bank Merger Act of 1966 be construed consistently with Congress' reiterated intent to vest authority in the bank regulating agencies to authorize mergers consistent with the public interest where public interest considerations clearly outweigh any visible impairment of competition.

1.5 The purpose of the Bank Merger Act of 1966 was to change a crucial holding of the Supreme Court in *Phila-*

2. The application was filed December 3, 1965. A copy thereof was supplied to the Attorney General shortly after filing. Since the application is in the nature of the record before the Comptroller, an additional copy is being filed with the Court concurrently with the filing of this brief.

delphia National, i.e., the Supreme Court's holding that Philadelphia's need for a larger bank "to bring business to the area and stimulate its economic development" was irrelevant. On this point the Supreme Court said:

"We are clear, however, that a merger the effect of which 'may be substantially to lessen competition' is not saved because, on some ultimate reckoning of social or economic debits and credits, it may be deemed beneficial. A value choice of such magnitude is beyond the ordinary limits of judicial competence, and in any event has been made for us already, by Congress when it enacted the amended §7. Congress determined to preserve our traditionally competitive economy. It therefore prescribed anticompetitive mergers, the benign and the malignant alike, fully aware, we must assume, that some price might have to be paid." 374 U.S. 321, 371.

This holding by the Supreme Court made a nullity of the bank regulatory agency's finding that the merger was in the public interest. The Bank Merger Act of 1966 was intended to reverse this result and to require the courts to consider the public interest just as the regulatory agencies are required to do. Perhaps the best indication of this intent is Section 3 of the Bank Merger Act of 1966, which permits Philadelphia National and Girard to reinstitute their merger application and have it acted upon in accordance with the provisions of the new Act.

1.6 The public interest which both the regulatory agencies and the Courts are required to take into account is "the convenience and needs of the community to be served." This standard is in no way unique. The concept of public convenience and necessity forms the universal basis for the regulation of industries affected with a public interest.

II. THE LEGAL ISSUES

2.1 *Controlling Statute.* The first legal issue is posed by the preceding section of this brief, namely, is this case controlled by Section 7 of the Clayton Act (as the Government contends)? Or is the case controlled by the Bank Merger Act of 1966 (as the Banks contend)? The answer is found in the Bank Merger Act, which says:

"In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than Section 2 [of the Sherman Act], the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5) [of the Bank Merger Act of 1966]." (emphasis supplied)

2.2 The reason why Congress directed the court to apply identically the same standards as the Comptroller is to be found in the history of Congress' efforts to regulate bank mergers.

(a) Before the Bank Merger Act of 1960, 74 Stat. 129 (1960), there were very serious gaps in the power of federal banking agencies to regulate bank mergers; and even where the power existed, the standards governing administrative discretion were not clearly spelled out. Congress passed the 1960 Act:

"to provide for control of all mergers by asset acquisition by banks under the jurisdiction of the Federal banking agencies, under uniform and clear standards calling explicitly for consideration of both banking factors and competitive factors, but without giving sole and controlling effect to any single factor," Senate Report No. 196, 89th Cong., 1st Sess. 1 (1959).

Congress had in mind Section 5 of the Interstate Commerce Act, which permits the merger of carriers if the

Commission finds that the proposed transaction will be consistent with the public interest and will not unduly restrain competition.³

(b) Following passage of the Bank Merger Act of 1960, the Supreme Court's decision in *Philadelphia National* established that the Federal banking agencies did not have exclusive jurisdiction over bank mergers; that bank mergers were subject to the Clayton Act; and that, in Clayton Act suits, the courts were to consider only competitive factors and were not required, or indeed permitted, to take into account the banking factors relating to public convenience.

(c) In the Bank Merger Act of 1966 Congress accepted the Supreme Court's decision that the decisions of Federal banking agencies approving bank mergers should be subject to review by the courts, but added the requirement that in such review the court must apply the same standards as the banking agencies, which include consideration of the banking factors of public convenience "in every case."

Congress made it clear that, as between the competitive factors and the public interest banking factors, public interest is to be overriding. At the same time Congress emphasized the importance of maintaining competition by providing that mergers which would have a substantial anticompetitive effect are not to be approved unless the public interest is clearly of greater weight.

2.3 *Review de novo*. The second legal issue is also posed by the preceding section of this brief, namely, is this Court to make an examination of the merger as if it were being done for the first time and come to its own conclu-

3. Senate Report No. 196, 89th Cong., 1st Sess. 4 (1959). The report cites *McLean Trucking Co. v. U. S.*, 321 U. S. 67 (1944); in which the Supreme Court compared the two standards of public interest and undue restraint on competition.

sions independently of the Comptroller and "free of presumptions traceable to anyone" (as the Government contends in paragraphs 80-86 of its pretrial brief)† Or is the Court required to uphold the Comptroller's decision if that decision is within the bounds of reasonable administrative discretion (as the Banks contend)† The Banks submit that the Bank Merger Act's direction that "the court shall review de novo the issues presented" should be given the same meaning as Section 10 of the Administrative Procedure Act, 5 U.S.C. §1009.⁴ Under Subsection (e) of that Section, the court could hold unlawful or set aside the Comptroller's action, findings and conclusions only if the court found them to be

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

2.4 *First National Bank of Smithfield, North Carolina v. Saxon*, 352 F.2d 267 (4th Cir. 1965), is an example of a review de novo in which the standards of the Administrative Procedure Act were followed. The *Smithfield* case was a suit for declaratory judgment attacking the Comptroller's approval of a branch application. The District Court held that the Comptroller's approval was invalid on its face because it had been issued without a hearing (232 F. Supp. 725 (1964)). The Circuit Court held that the Comptroller was not required to grant a hearing, but that his approval was nevertheless subject to judicial review under the Administrative Procedure Act. It returned the proceedings

4. The fact that the proceeding is in the form of an action for an injunction rather than a petition for review is immaterial. Section 10 of the Administrative Procedure Act provides that, in the absence of any special statutory review proceeding, the form of proceeding for judicial review shall be "any applicable form of legal action including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction" (Subsection (b)).

to the District Court for a trial de novo on the facts, but held that if "after the Court has made its fact findings, it then appears that the decision of the Comptroller is dependent upon an exercise of discretion, the Court cannot substitute its discretion for the Comptroller's. However, it can set aside such a determination if, in the light of the facts found by the court, it concludes that the Comptroller has abused, exceeded or arbitrarily applied his discretion" (352 F.2d 272). The Court of Appeals characterized this procedure as a "review de novo" of the action of the Comptroller (352 F.2d 273).⁵

2.5 If the review provisions of the Bank Merger Act of 1966 were interpreted as the Government contends they should be—i.e., to authorize the Court to make an independent decision as to whether the public interest in the merger outweighs any anticompetitive effect, the Act would violate the constitutional separation of powers.

"If the function performed by an agency is 'administrative' or 'legislative' and if a federal court is required to do all over again what the agency has done, the system of review violates Article III of the Constitution" Davis, *Administrative Law Treatise*, 1958, Vol. 4, p. 180, §29.10.

The maximum scope of judicial review under the Constitution in a situation such as this was defined in two Supreme Court decisions under the Radio Act of 1927, *Federal Radio Commission v. General Electric Co.*, 281 U.S. 464 (1930), and *Federal Radio Commission v. Nelson Brothers Bond & Mortgage Co.*, 289 U.S. 266 (1933). The Radio Act authorized the Radio Commission to grant and renew station licenses "where public convenience, interest or necessity will be served thereby" and provided for appeal to the

5. The Smithfield case was decided during the legislative hearings on the Bank Merger Act of 1966 and may well be the source of the phrase "review de novo" as distinguished from the more usual phrase "trial de novo."

Court of Appeals of the District of Columbia. When *General Electric* was decided, the appeal provision (Section 16) permitted the Court of Appeals to "alter or revise the decision appealed from and enter such judgment as to it may seem just." In *General Electric*, the Court of Appeals had exercised this power to change the provisions of an order entered by the Radio Commission, and the Commission sought review by the Supreme Court. The Supreme Court held that the proceeding before the Court of Appeals "was not a case or controversy in the sense of the judiciary article, but was an administrative proceeding, and therefore that the decision therein is not reviewable by this Court" (281 U.S. 470).⁶ The subsequent developments are described in *Nelson Brothers*, another appeal from an order of the Court of Appeals of the District of Columbia reversing a decision of the Radio Commission:

"In the light of the decision in the *General Electric* case, *supra*, the Congress, by the Act of July 1, 1930, c.788, amended §16 of the Radio Act of 1927 so as to limit the review by the Court of Appeals. [citation omitted] That review is now expressly limited to 'questions of law' and it is provided 'that findings of fact by the commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the commission are arbitrary or capricious.' This limitation is in sharp contrast with the previous grant of authority. *No longer is the Court entitled to revise the Commission's decision and to enter such judgment as the Court may think just.* The limitation manifestly demands judicial, as distinguished from administrative, review." (289 U.S. 275-6) (emphasis supplied)

6. The Court of Appeals of the District of Columbia was considered to be a legislative court and therefore not restricted to the constitutional jurisdiction over cases and controversies (281 U. S. 468).

The Supreme Court recognized the limits of permissible review in *Philadelphia National*, where, speaking of "an ultimate reckoning of social or economic debits and credits," it said:

"A value choice of such magnitude is beyond the ordinary limits of judicial competence . . ." (374 U.S. 371).

2.6 *Burden of Proof.* The third legal issue is the burden of proof on the question of community convenience and needs. The normal rule is that the plaintiff must prove his case. The Government contends that its case does not include proof as to community convenience and needs because the question of convenience and needs "enters into the picture as an exception to the antitrust laws" (paragraphs 74-79 of the Government's pretrial brief). The short answer is that under the Bank Merger Act of 1966 the consideration of convenience and needs is not an exception; community convenience and need is a basic factor which the Act requires the Comptroller to take into account "in every case." In this case the Comptroller concluded that the merger of Provident and Central-Penn is in the public interest after taking into account the effect on competition and the improved quality of banking services which will result. If the Government is to upset the Comptroller's conclusion, the Government has the burden of showing wherein the Comptroller acted arbitrarily or capriciously or wherein he exceeded his discretion in striking a balance between competition and public interest. It cannot discharge this burden by a showing directed solely at the competition side of the scale. If it is to succeed in this case, the Government must evaluate the weights on *both* sides of the scale, public interest as well as competition, and in addition it must demonstrate that the Comptroller's evaluation is arbitrary, capricious, or unreasonable.

2.7 The quotations from various Congressmen set forth in paragraphs 76 through 79 of the Government's

pretrial brief—while they speak of the “burden” on the merging banks and the Comptroller—are not directed at the specific legal issue of burden of proof. The Congressmen were not concerned with the niceties of trial procedure. Their concern was with the standard to be followed by the Comptroller in passing on bank merger applications and by the courts in reviewing the Comptroller’s action. The Congressmen quoted by the Government are individuals who would have preferred no Bank Merger Act of 1966. In the face of Congressional pressure for an act which would permit bank mergers in the public interest, these legislators fell back to the position of emphasizing the importance of maintaining competition. That is all their statements amount to.

2.8 *Market Share and Concentration Statistics.* The fourth legal issue foreshadowed by the Government’s pretrial brief is whether the Government can, as it apparently intends, prove its case on competition by statistics as to the number of banks with headquarters in the area; mergers among these banks (including mergers involving the defendant Banks); and the percentages of deposits, offices, assets and loans held by the five largest banks and by the defendant Banks (par. 111-116, 122, 125-128). In thus basing its case on statistics, the Government is following the path marked out in *Philadelphia National*, where the Supreme Court disregarded this Court’s qualitative findings as to competition and relied instead on market share and market concentration figures. However, the Government overlooks the difference in the relative positions of the banks in *Philadelphia National* and in the instant case. In *Philadelphia National* the Supreme Court at the outset noted that “the resulting bank would be the largest in the four-county area, with (approximately) 36% of the area banks’ total assets, 36% of deposits and 34% of net loans. It and the second largest (First Pennsylvania Bank and Trust Company, now the largest) would have between them 59% of the total assets, 58% of deposits, and 58% of the

net loans, while after the merger the four largest banks in the area would have 78% of total assets, 77% of deposits, and 78% of net loans" (374 U.S. 331). Under these circumstances the Supreme Court felt that it was possible "to simplify the test of illegality" (374 U.S. 362). It held that "a merger which produces a firm controlling an *undue* percentage share of the relevant market, and results in a *significant* increase in the concentration of firms in that market, is so *inherently* likely to lessen competition substantially that it must be enjoined . . ." (374 U.S. 363, emphasis supplied). But in the next sentence the Court was careful to point out that this simplified test applied "*only* with respect to mergers whose size makes them inherently suspect in light of Congress' design in §7 to prevent *undue* concentration" (374 U.S. 363, emphasis supplied). In the instant case the merged bank will not control an "undue" share of the market; the increase in concentration will not be "significant"; and the size of this merger does not make it "inherently suspect." Also, Congress' design in the Bank Merger Act of 1966 was different than in §7 of the Clayton Act. The Banks contend that this is not a case for a simplified, quantitative test, but rather a case for a qualitative examination of effects on competition, including beneficial effects as well as any adverse effects.⁷ To use the much quoted words of the Supreme Court in *United States v. Brown Shoe Co.*, 370 U.S. 294, 322, fn. 38, "only a further examination of the particular market—its structure, history and probable future—can provide the appropriate setting for judging the probable anticompetitive effect of the merger."

2.9 Section of the Country. The fifth legal issue involves the section of the country in which the effects of the merger are to be measured. In this case the Government has selected the Philadelphia four-county area and has

7. The Comptroller has pointed out (page 17 of his opinion) that there is a close relationship between competition and convenience and needs.

assumed the burden of proving the effect on competition within that area. The Banks contend that the Government cannot sustain its burden of proof with respect to the area it has chosen—particularly insofar as it confines its proof to market shares and concentration—for two reasons: First (as described later in this brief), the figures as to market shares and concentration do not reflect competition from other financial institutions; Second, as this Court found in its decision in *Philadelphia National*, the four-county area is not a natural market in which market shares and concentration can be measured.⁸ Rather, the four-county area is an arbitrary section of a much larger market, which also comprises a number of smaller markets. Thus:

(a) No bank competes only in the four-county area. The six reserve city banks in Philadelphia with offices in all four counties derive very substantial business from outside the area. For example, the *Philadelphia National* opinion shows that Philadelphia National and Girard obtained 46% and 37%, respectively, of their commercial and industrial loans from outside the four counties (374 U.S. 359, fn. 36). Provident and Central-Penn obtain, respectively, about 42% and 17% of their loans from outside the area.

(b) Commercial banks in New York, Pittsburgh and other financial centers compete for the business of large customers in the four-county area. Savings institutions across the country compete for the savings of individuals.

(c) Important competitors of the defendant Banks have branches outside the four-county area. Both Continental Bank and Trust Company (with resources of \$376,000,000) and Industrial Valley Bank and Trust

8. The Supreme Court recognized as much in *Philadelphia National*, when it arbitrarily reduced the apparent share of the merged bank by 16 $\frac{2}{3}$ % (from 36% to 30%) (374 U.S. 364).

Company (with resources of \$196,000,000) have branches in Chester County and are permitted to branch into Berks and Lehigh Counties as well.

(d) Banks in Camden, Trenton, Burlington and Wilmington can and do compete for the business of commuters between those communities and Philadelphia, Bucks, Montgomery and Delaware Counties and for the business of residents and businesses in the adjacent portions of those counties.

(e) Banks in Chester, Berks, Lehigh and Northampton Counties can branch into portions of the four-county area.

(f) Certain services offered by the reserve city banks are particularly directed at other banks and customers outside the metropolitan area, examples being correspondent bank services, corporate fiduciary services, and international services. In all these cases the customer in the country particularly desires representation in the city. The importance of these services can be gauged by the published reports of First Pennsylvania which show correspondent bank balances in the order of \$200,000,000.

The Appendix which the Banks are filing with this brief contains a memorandum showing the banks operating offices in the four-county area and banks permitted by statute to branch into the area.⁹ The complexity of this pattern

9. Despite the inference drawn by the Supreme Court in the *Philadelphia National* case (374 U. S. 361), the branching limitations in Pennsylvania law are not intended to define "a meaningful banking community." They are intended rather to protect country banks from competition by banks in larger communities. Thus, the branching laws are a restriction on the ability of Provident and Central Penn to develop and compete, and this restriction is a major justification for the merger. The restrictive effect of the Pennsylvania branching laws is compounded by the fact that the Philadelphia-Camden metropolitan area is bisected by state lines, which present further limitations on the ability of Philadelphia banks to achieve a size commensurate with the needs of the metropolitan area.

makes the Government's figures as to market shares and concentration meaningless.

2.10 *Competition.* The sixth legal issue is whether the Comptroller was correct in measuring the effect of the merger not only in respect of competition among commercial banks but also in respect of competition between commercial banks and other financial institutions. His opinion (page 8) analyzes competition with mutual savings banks, insured savings and loan associations (including those as far away as California), insurance companies, credit unions, finance companies, small loan and consumer discount companies, and factoring companies. The Government chooses to ignore this competition and cites as its justification the concept of "line of commerce," even though the words "line of commerce" do not appear in the Bank Merger Act of 1966. The Government's convenient solution is to suggest that "clearly it was the intention of the drafters to include" the missing expression (par. 99). This suggestion is wholly gratuitous. The fact that the drafters of the Bank Merger Act of 1966 followed the Clayton Act in the phrases "any section of the country" and "may be substantially to lessen competition" compels the conclusion that their failure to follow the Clayton Act in the further phrase "line of commerce" was deliberate: *Lichten v. Eastern Airlines, Inc.*, 189 F. 2d 939, 941 (2d Cir. 1951).¹⁰

10. Senator Robertson, Chairman of the Senate Committee on Banking and Currency, in his explanation of the bill to the Senate, said: "The text of paragraph (B) of the new bill follows the terms of section 1 of the Sherman Act and section 7 of the Clayton Act, with the exception that the reference to 'any line of commerce' in the Clayton Act is not carried over into the new bill. In this respect the new bill resembles the Bank Merger Act of 1960, and calls for an appraisal of the overall effects of the merger on competition, weighing increases of competition in one field against decreases in competition in another field. The banking agencies and the courts, in other words, are not intended and are not permitted to select some single, perhaps minor aspect of the banks' business and to say that, because there is some lessening of competition in this element of the business, the overall effects of the merger—the increase of competition

2.11 The Government's purpose in arguing "line of commerce" is similar to its purpose in choosing a restricted section of the country; namely, to impute validity to the Government's figures as to concentration and market shares. Since its statistics relate only to commercial banks, the Government would like to confine the case to these institutions and thus avoid the much more complex task of assessing the competitive effect of this merger in the financial market in which the banks compete. The Government's statistics as to deposits and loans of commercial banks are meaningless because in each category they leave out of account large segments of competition. Thus:

(a) In seeking deposits, commercial banks compete with savings banks, savings and loan associations, sellers of United States Treasury Bills, Federal Agency Securities, commercial paper, and other short term investments.¹¹

(b) In seeking loans, commercial banks encounter competition from finance companies, insurance companies, savings banks, savings and loan associations, credit unions, and credit provided by suppliers of goods and equipment.¹²

The Government's statistics, in ignoring this competition from other financial institutions both inside and outside the four-county area, grossly overstate the competitive signifi-

in the entire field of banking and in the broader field of financial institutions which may result from other aspects of the merger—are irrelevant and may not be considered." (Cong. Rec., 89th Cong., 2nd Sess., p. 2541, February 9, 1966)

11. Since 1955 time deposits of Third Federal Reserve District member banks have increased 156%. Whereas time deposits were 27.4% of total deposits in 1955, they were 45% of total deposits in 1965.

12. Bank portfolios today have a much smaller percentage of short term self-liquidating loans than was the case even five years ago. Largely in response to customer demand, banks are increasing their volume of term loans and thus competing more directly with finance and insurance companies and other term lenders.

cance of this merger. The Banks contend that the Comptroller was correct in analyzing the competition from other financial institutions and that the Government is wrong in omitting to do so.

2.12 The legislative history contains many statements recognizing the importance of competition between commercial banks and other financial institutions. The House Report for the first Bill (S. 1698) reported out of the House Committee on Banking and Currency said:

"In making this review, your committee expects the banking agencies, the Department of Justice, and the courts to give full consideration to all aspects of the public interest, and take into consideration all elements of competition and all elements entering into the convenience and needs of those who are to be served by the resulting bank. The committee recognized that commercial banks face intensive competition from other financial institutions—savings and loan associations, mutual savings banks, insurance companies, finance companies, and so forth. The committee also recognized that competition between commercial banks, and between commercial banks and other institutions, includes local competition, regional competition, national competition, and even international competition for one part or another of their business. To overlook any of these aspects of competition, or to concentrate on one of them to the exclusion of the others, would be unrealistic and might well diminish, not increase, financial competition."

The House Report on the Bill (H.R. 12173) as finally enacted said:

"The banking agencies and the Department of Justice are united in the expression of their ultimate goals, which are the maintenance of a sound banking system and the promotion of *healthy competition*

among financial institutions to the end that the needs of a growing economy and the individuals and business units which make it up shall be adequately served. Needless to say, the attainment of these objectives is also the primary concern of your committee in recommending for enactment the bill reported herewith." (emphasis added)

Senator Robertson pointed out during Senate debate on the Bill in its final form:

"Furthermore, the business of banking is not a simple or limited activity. On the contrary, commercial banking consists of many different activities, and there are competitors in other fields for each of these activities.

"For personal demand or time deposits, banks compete with savings banks, savings and loan associations, and credit unions. This is real and fierce competition, as can easily be seen from the various trade publications and the newspaper advertisements which have followed the recent increase in the ceilings on interest rates in savings accounts in commercial and savings banks.

"For consumer loans and home mortgages, commercial banks must compete with finance and insurance companies, in addition to savings banks, savings and loans, and credit unions.

"Commercial banks must compete for deposits from and loans to business firms, with insurance companies, factors, savings banks, and savings and loans, and even with the U.S. Government—both as issuer of bills and notes which corporate treasurers now find attractive in large quantities, and as issuers of vast quantities of FNMA, EXIM, and SBA, Home Loan Bank and other obligations or participations.

"And in most of the other services commercial banks provide, they meet with other competition. Trust services are also provided by individual lawyers, as every lawyer in the Senate knows, or by professional trustees, about whom our friends from Boston can tell us.

"Furthermore, even in the field of commercial banking there are many varieties and kinds of competition. As the House report on the bill points out, the nationwide competition of automobile companies is quite different from the local competition of laundries. So also, competition between the 37 different billion-dollar banks in 14 different cities for the million-dollar deposits and loans of the great nationwide steel, aluminum, and chemical companies is very different from the competition of the local banks and savings and loan associations for an individual \$20,000 home mortgage or the competition of local banks, credit unions, and automobile dealers for a \$2,500 loan on a new automobile.

"The small banks, the credit unions, and the small savings and loan associations are apt to compete only for the small local deposits and loans—the big banks compete with the big insurance companies and commercial factors and with each other for the nationwide business. They also compete with the small organizations for the local business. Each bank is surrounded by a series of concentric circles. The smallest one represents the area of competition for small deposits and small loans. A larger ring represents the area of competition for medium loans, and so on. The whole world is the area of competition for the biggest loans.

"Any estimate of the competitive nature of the banking business in the broad and meaningful sense of the terms, and of the opposite—the degree of monopoly—must be based on the realities of the business of

banks and of the other closely related institutions which make up the financial world." (Cong. Rec., 89th Cong., 2nd Sess, p:2541, February 9, 1966)

2.13 The intent of the Bank Merger Act of 1966 is clear. The courts are to take a new, fresh look at bank mergers in the light of the fact that banking is regulated in the public interest. In so doing, the courts can and should follow the precedents established in the application of merger statutes to other regulated industries—which consider competition from sources outside the industry as well as those within. An example is the per curiam decision of the Supreme Court in *Seaboard Air Line Railroad Co. v. U.S.*, 382 U.S. 154 (1965). That case involved the merger of two railroads to produce lower costs and improved service and to eliminate duplication of facilities. The Department of Justice opposed the merger because it would tend to create a rail monopoly. The Interstate Commerce Commission, while recognizing that a monopoly would be created, nevertheless approved the merger, noting that the need to preserve competition among railroads had diminished because the railroads were losing traffic to truck, water and other modes of competition. The Supreme Court held that it was not necessary for the Commission to determine whether or not there was a technical violation of the Clayton Act. The Commission's task was to appraise the effects of the curtailment of competition along with the advantages of improved service to determine whether the merger would effectuate the overall transportation policy. The Court said: "It matters not that the merger might otherwise violate the antitrust laws; the Commission has been authorized by Congress to approve the merger of railroads if it makes adequate findings in accordance with the criteria quoted above that such a merger would be 'consistent with the public interest' " (382 U.S. 156).

2.14 In taking this position as to competition from other financial institutions, the Banks are not disregarding

the finding of this Court in *Philadelphia National* that commercial banking is a separate line of commerce. This Court's finding was made in rejecting the then contention of the Government (and the banks that were defendants in that case) that commercial banking should be subdivided into various product lines (201 F. Supp. 361). This Court recognized that banks face competition from other institutions but did not consider that such competition justified a fragmented approach under the Clayton Act (p. 362-3). The Banks are not asking the Court to reverse that position in this case. They are arguing that under the Bank Merger Act of 1966 the competition from other financial institutions (which no one denies is real and important) should be taken into account and that the existence of this competition from other institutions invalidates statistics which do not include the other institutions.

III. FACTS

A. INTRODUCTION

3.1 The merger of Provident and Central-Penn must be viewed in the light of the modern evolution of banking. Such banking developments as magnetic imprinting of checks, computerized transit operations, intercity night truck runs, and the national "bank wire" service have reduced collection periods between distant cities so that, in many cases, funds deposited in a major bank in New York are available in Philadelphia the next day, and vice versa. Without such developments, the amount of demand deposits required to transact the nation's business would be several times larger,¹³ and the cost of processing the current national volume of 12-14 billion checks a year would be prohibitive. In addition, improvements in communication and transportation tend to make the money market more

13. Demand deposits in Philadelphia and other major financial centers (excluding New York) currently turn over about 50 times a year—almost twice the annual rate in 1955.

national and even international. Philadelphia is part of a developing megalopolis stretching from Boston to Washington and interconnected by high speed rail service. European banking centers are less than a half day's journey by plane from major cities in the United States. Foreign banks have numerous offices and agencies in this country. Larger banks in this country are increasing their offices and investments abroad. First National City Bank of New York owns a Canadian bank. Mellon National Bank and Trust Company of Pittsburgh has invested \$15 million in a British bank.¹⁴ The Bank of America is issuing credit cards which can be used nationally and internationally and can ultimately be meshed with checking accounts to provide unified financial service. Against this background, the Comptroller was clearly right in holding that the merger of Provident and Central-Penn can have no significant adverse effect on competition, but to the contrary will improve the quality of banking service and assist the economic growth of Philadelphia. Larger banking units are needed in the modern financial world. Their services benefit small customers as well as large. Indeed, the smaller customer may have greater need for the specialized services provided by larger banks because he lacks the resources to provide the services for himself.

3.2 The Comptroller was also correct in holding that the merger will stimulate competition with the larger banks in Philadelphia and elsewhere. Central-Penn is the smallest reserve city bank in Philadelphia, less than one-quarter as big as the leading bank (First Pennsylvania). Provident is the next smallest, less than half as big as First Pennsylvania. Because of the disparity in size—and for other reasons set forth later in this brief—Provident and Central-Penn

14. Such investments are made through subsidiaries organized under the Edge Act, 12 U. S. C. § 611, et seq. Provident's Edge Act subsidiary is limited to an investment of about \$300,000 in any foreign bank without specific approval of the Federal Reserve Board. Central-Penn does not have an Edge Act subsidiary.

are at a disadvantage in competing with their larger rivals. As stated by the Government in its suit to enjoin the merger of Continental Illinois National Bank and Trust Company and City National Bank and Trust Company (U.S. District Court for the Northern District of Illinois, Civil Action No. 61-C-1441):¹⁵

"Banking institutions the size of the defendants [combined assets of \$3.2 billion] have tremendous competitive advantages simply by virtue of the large economic power they possess, their 'public image' of size and their consequent superior ability to attract more business and larger customers. They also enjoy a greater ability to raise capital, finance expansion and undertake advertising and promotional programs the cost of which would exceed the more limited resources of their smaller rivals.

"In addition they are in a better position because of their size to carry out programs of customer solicitation, and to attract more influential people to their boards of directors. Because of their larger capital and surplus, they also possess lending limits exceeding those of their smaller rivals, and are thus able to attract customers with larger credit needs."

That quotation aptly describes the competitive advantages enjoyed by the two leading Philadelphia banks (The First Pennsylvania Banking and Trust Company and The Philadelphia National Bank) by reason of the fact that they are very substantially larger than their rivals. The merged bank will be about two-thirds the size of First Pennsylvania

15. This merger combined the second and the sixth largest banks in Chicago to form the largest bank in that city and the ninth largest in the United States. Under Section 2(a) of the Bank Merger Act of 1966 it is "conclusively presumed not to have been in violation" of the Clayton Act. The quotation is from the Government's Introductory and Summary Pretrial Brief, p. 10.

and three-quarters the size of PNB. It will be in a position to compete on more nearly equal terms with those two leaders. The advisory report of the Federal Reserve Board on the question of competition summed up the pro-competitive effects of the merger as follows (p. 9) :

"Currently, Provident is the fifth largest bank in the Philadelphia four-county area in terms of IPC deposits and loans, and it ranks sixth in terms of banking offices. Central-Penn ranks seventh in these three categories. If the proposed merger is consummated, the resulting bank would rank fourth in size based on IPC deposits, third in size based on loans, and first in size based on the number of banking offices. In addition to having the most offices, the geographical coverage of such offices in the four-county area would be the most thorough and extensive of the area banks. With regard to the trust department, Provident currently ranks fourth behind First Pennsylvania, Girard, and Fidelity in the value of assets held and, if the merger is consummated, it would still rank fourth in the value of assets held although it would be first in the number of individual accounts under administration. Concerning the Philadelphia area, the resulting bank, with its increased lending limit and its branch system enlarged, *would be in a position to compete more effectively with the three largest Philadelphia banks; namely, The First Pennsylvania Banking and Trust Company, The Philadelphia National Bank, and Girard Trust Bank.*" (emphasis supplied)

3.3 The following sections contain an outline of the facts the defendant Banks expect to prove at the trial. Since the Government's brief made no effort to analyze the business of the Banks, the services they provide, or the competition they face, the Banks do not know whether the facts set forth below are admitted or contested.

B. BACKGROUND OF THE PROPOSED MERGER

3.4 Development of Full Service Banking in Philadelphia. Any assessment of this merger must be made against the development of modern, full service banking in Philadelphia, which may be summarized as follows:

(a) On April 1, 1926, the first and second largest banks in Philadelphia merged to form Philadelphia-Girard National¹⁶ and the third and fifth largest banks merged to form Franklin-Fourth Street National. On April 9, 1928, Philadelphia-Girard National and Franklin-Fourth Street National merged to form the present Philadelphia National Bank (PNB). PNB was at that time about four times as large as the second largest commercial bank (Corn Exchange National), and it dominated the Philadelphia banking scene until more recent years. No Philadelphia bank could compete with it effectively, particularly in the national market, in correspondent banking, and in international banking. In all these fields, PNB was recognized as the only bank of stature in the City.

(b) On December 31, 1940, PNB was still twice as large as its nearest competitor The Pennsylvania Company (which had absorbed the Bank of North America, a commercial bank, in 1929 and Colonial Trust in 1930). PNB's assets of \$672 million comprised more than 30% of the total assets of the City's national banks and trust companies combined. After PNB and The Pennsylvania Company (\$317 million), the four ranking commercial banks were Corn Exchange National (\$155 million), First National (\$126 million), Central-Penn National (\$90 million), and Tradesmens National (\$69 million). There were also three large trust companies (in addition to The Pennsylvania Company): Fidelity-Philadelphia (\$158 million), Girard (\$153 mil-

16. This bank had no connection with Girard Trust.

lion), and Provident Trust (\$76 million). While these trust companies accepted deposits and made loans to a limited extent, they did not engage in general commercial banking. There were also some 33 smaller banks and trust companies, most of them serving local customers in the neighborhoods of their offices.

(c) In 1951, Girard Trust (a leading trust company) and Corn Exchange National (a commercial bank) merged to become the third large full service bank in the City, ranking behind PNB and The Pennsylvania Company.

(d) In 1955, The Pennsylvania Company (which had one of the largest trust departments in Philadelphia) merged with First National (a commercial bank with very little trust business) to form First Pennsylvania, which thus became and still remains the largest commercial bank in Philadelphia.

(e) In 1957, Provident Trust merged with Tradesmen to become the fourth largest bank and trust institution.

(f) The other major trust company, Fidelity, was party to a series of mergers, culminating in its 1964 merger with Liberty Real Estate Bank and Trust Company, which brought Fidelity into fourth position, ahead of Provident.

3.5 The foregoing history of mergers among the city banks since 1940 is one of increasing competition. Whereas in 1940 Philadelphia had only one major bank, which was head and shoulders above the rest, it now has two (PNB and First Pennsylvania) of nearly equal stature, and a third (Girard) not far behind. A fourth (Fidelity) is also now of a size to render effective competition. The Provident-Central-Penn merger will create a fifth. Thus the merger of Provident and Central-Penn is the culmination of a fifteen-year development in which the Philadelphia

commercial banks and the Philadelphia trust companies have joined to produce modern, full service banking institutions. It will give Philadelphia five major banks—all able to compete on a relatively equal basis. Such an array of closely matched competitors is not to be found in any other metropolitan area in the United States.

3.6 Development of Large Country Banks. In addition to the evolution of full service city banks, there has been another development in the competitive situation in Philadelphia which has emerged largely after the *Philadelphia National* decision. That development is the creation of two large country banks headquartered in Montgomery County. Continental Bank and Trust Company (\$387 million) is the result of the 1965 merger of Broad Street Trust Company and Montgomery County Bank and Trust Company. Industrial Valley Bank and Trust Company (\$196 million) is the result of the 1961 merger of Industrial Trust Company and Jenkintown Bank and Trust Company and several subsequent mergers with smaller banks. These large country banks have important competitive advantages over the reserve city banks. They are required to maintain 27% smaller reserves against demand deposits than the city banks and, unlike the city banks, are permitted to invest 40% of their total reserves in interest bearing securities. Moreover, under Pennsylvania law they are permitted to branch, not only in the four-county area, but in three additional counties as well.¹⁷ Both Continental and IVB have

17. The difference in reserve requirements derives from the fact that these two banks are not members of the Federal Reserve System. Continental has also elected to resign membership in the Clearing House, thus obtaining additional advantages by reason of the deferred payment of checks provided for country banks which are not members of that organization. These facts, together with the difference in head office location, make it unlikely that either Continental or IVB will merge with one of the reserve city banks. In any such merger the city bank would have to forego its membership in the Federal Reserve and its city status, or the country bank would have to forego its reserve advantages and its Chester County offices.

branches in Philadelphia, Montgomery, Delaware and Chester Counties. Continental has announced plans for a very large bank and office building at 15th and Market Streets in center city.

3.7 Development of Branch Banking. Paralleling the development of full service city banks and large country banks described above has been the development of their branch systems, partly through mergers and partly through *de novo* branching. Branch, or retail, banking has become one of the most important areas of competition among commercial banks, since a large proportion of new customers are attracted to convenient branches. Offices other than the head office account for 90% of individual savings deposits at Provident, 87% of individual savings deposits at Central-Penn and more than 45% of demand deposits of individuals, partnerships and corporations at both Provident and Central-Penn. In 1940 there were 171 commercial banking offices in the four-county region, of which 118 were head offices and 53 branch offices. At present (December 31, 1965) there are 382 commercial banking offices, of which 34 are head offices and 348 branches. The four largest banks (First Pennsylvania, PNB, Girard and Fidelity) have branch systems providing substantially complete coverage of the entire area.¹⁸ The smaller banks have less extensive systems. Provident lacks coverage in lower Bucks County. Central-Penn is deficient in the northeast section of Philadelphia and in upper Montgomery County and Delaware County. Continental and IVB have no branches in Bucks County.

3.8 Effect of Bank Mergers. The bank mergers in Philadelphia in the last 25 years have enabled the banks to

18. Complete branch coverage affords competitive advantages in that it enables the bank (a) to offer convenient service to customers who need banking facilities throughout the four-county area and (b) to continue to offer service to all customers no matter where they move within the area. Also, banks with complete coverage can make better use of area-wide advertising.

keep pace with the increasing size of their customers and to respond to the demands of small as well as large customers for more extensive services and facilities. The 1940 array of Philadelphia banks would have been inadequate to meet the needs of the 1965 Philadelphia business and financial community. The 1940 country banks would have been inadequate to meet the needs of modern suburban communities with their growing populations, expanding school districts, municipal authorities and governmental units and their industrial parks, research laboratories and light industry.¹⁹ The local banking services provided by the branch offices and head offices throughout the four-county area at present are superior to those in 1940. And the local customer, who chooses his bank on the basis of convenience, is offered at least as many choices as he was offered 25 years ago, probably more.

C. THE MERGER IS IN THE PUBLIC INTEREST BECAUSE THE MERGED BANK WILL PROVIDE BETTER SERVICE AND MORE COMPETITION AND WILL BETTER SERVE COMMUNITY NEEDS

3.9 The Banks Must Grow to Provide Fully Competitive Services. While all banks deal in the same basic commodities (money and credit), their freedom to compete in this field is restricted by laws and regulations. For this reason, the field of service has become an important arena of competition, particularly in metropolitan areas like Philadelphia. Metropolitan banks vie with one another in devising new and improved services, in tailoring services to the specialized needs of individuals and businesses, in making services more conveniently available, and in offering the skilled guidance and wise counsel which is of increasing importance in today's complex financial affairs. Modern

19. In many cases mergers of small country banks and large city banks were initiated by the country bank, which recognized that its financial resources, facilities and personnel were inadequate to serve the growing needs of its community.

businessmen and entrepreneurs prefer to deal with a bank which has a broad line of services available, even if they may not have immediate need for all of them. This kind of service competition calls for a large staff with specialized skills and broad experience. The merged bank, by its prestige and its higher salaries, will be able to attract and hold better qualified personnel. Because it will handle a larger volume and variety of transactions, it will have larger departments, which will permit more expertise and specialization. It will also be able to assign personnel on a full-time basis to forward planning and operations research, which in turn should produce new and better services and more economical operation.

3.10 Merger is the Only Practical Means of Growth. Merger is the only practical way for the defendant Banks to achieve the substantial increase in size which both need in order to provide a specialized organization and an inventory of services fully competitive with those offered by larger banks in Philadelphia, New York and other cities. The normal growth in deposits and the normal increase in capital through retained earnings will not produce the required change in the "order of magnitude" of the two banks. Nor will normal growth close the gap between the two banks and the leading institutions in the area. Moreover, the extraordinary internal growth which has been achieved by a few banks in other sections of the country is out of the question in Philadelphia because:

(a) Philadelphia's economy is not expanding enough to generate a substantial change in growth rate for any single bank. In the last 15 years Philadelphia's economic growth, as measured by the growth in employment, has lagged far behind that of most other urban centers; the Philadelphia port has failed to hold its own in the movement of general cargo as against competing ports on the North Atlantic seaboard; and there has been a decline in the number of home offices of substantial businesses in the Philadelphia area.

(b) The Philadelphia four-county area is virtually saturated with banking offices. While new branches will continue to be opened, no bank will be able to steal a march on its competitors because of the scarcity of suitable locations.

(c) The natural alternative of expanding into other nearby communities is foreclosed by law. Philadelphia banks cannot branch into such cities as Camden and its suburbs, Wilmington, Trenton, Downingtown, Coatesville, Reading, York, Bethlehem or Allentown, all of which would be natural targets for expansion if competition were unrestricted.

3.11 The Merger Will Produce Better Service Through the Combination of Specialties. The merged bank will also provide better service than either bank offers separately because it will combine the different and complementary traditions and specialties of the two institutions. In this merger, the whole will be greater than the sum of the parts.

(a) Provident was organized in 1922 to take over the banking, trust and fiduciary business of Provident Life and Trust Company. At this point it was a traditional trust company, one of the four largest in Philadelphia. In 1957 it merged with Tradescmens Bank and Trust Company and thus acquired strong construction loan and foreign departments. Trusts, construction lending and foreign banking are still considered its fields of specialty.

(b) Central-Penn is one of the oldest commercial banks in Philadelphia with a strong tradition in commercial lending. In 1950 it purchased The Charter Bank (formerly The Morris Plan Bank), one of the pioneers in consumer lending. Central-Penn and First Pennsylvania are the leading Philadelphia banks in the handling of local automobile dealer paper.

3.12 *The Merged Bank Will be a More Effective Competitor.* The merged bank will be a more effective competitor because the merger will provide a solution to the competitive handicaps facing the separate institutions:

(a) The serious gaps in both the banks' branch systems will be cured by the merger. Provident is well represented in Delaware County, some sections of Montgomery County, and the northeast section of Philadelphia, all areas where Central-Penn has virtually no offices. Central-Penn is well represented in lower Bucks County, where Provident has no branches. The combined branch system will be competitive with those of First Pennsylvania, PNB, Girard and Fidelity. Neither bank could develop such a complete branch system on its own within any reasonable period of time.

(b) Both banks are handicapped in competing in the national market for negotiable certificates of deposit because of their small size. The merged institution will be better able to attract and hold this business.²⁰

(c) Central-Penn is handicapped in satisfying the demands of numerous customers for international services, the more complex corporate fiduciary services, certain accounting and financial services, and expert assistance in formulating and carrying out elaborate financial transactions. The addition of Provident's personnel, facilities and skills will fill these needs.

(d) Central-Penn's earnings have not kept pace with those of other major Philadelphia banks.²¹ Among

20. Such certificates are issued and purchased on strictly competitive terms as money market investments. The Federal Reserve Bank of New York has noted in its Monthly Review for November 1965 that such a certificate "possesses greater marketability if it is issued by a bank of national repute."

21. Central Penn's relatively high costs and low earnings have depressed the price of the Central-Penn stock. This in turn has made

other reasons, its trust department is too small to operate as an economic unit, and the bank has not yet achieved complete automation of its operations. Provident's large and efficient trust department and more extensive automation will cure these problems.

(e) Central-Penn has lower capital ratios than its major competitors in Philadelphia; Provident has the highest capital ratios of all the Philadelphia banks. Central-Penn's main office quarters are cramped and will have to be expanded or replaced at substantial cost before its leases expire in 1970; Provident has sufficient space available to accommodate the combined operation.

(f) Central-Penn must take steps to solve its problems within the not-too-distant future if it is to attract and retain first class personnel and provide the full line of services its customers demand. Merger with Provident is the obvious and unique solution.

3.13 *The Merger Will Produce Efficiencies and Economies.*²² The merged bank will be more efficient. There will be immediate savings in excess of \$1.25 million annually, of which about half will result from the elimination of duplication of accounting procedures, personnel, equipment and space, and the remainder from more complete automation

it difficult for Central-Penn to expand its branch system by merger with country banks, whose stocks generally sell at higher prices. Country banks generally expect a "premium" in the market value of the stock they receive in a merger, and the payment of such a "premium" in Central-Penn stock would unduly dilute the equity of Central-Penn's own stockholders.

22. "It must be borne in mind that public convenience and necessity may be found in operating economies and those things which contribute to expedition, public safety and efficiency in operation, because, while they benefit the carrier first, they indirectly contribute to the public safety and more reliable and expeditious and cheaper transportation," *East Texas Motor Freight Lines v. U. S.*, 96 F. Supp. 424, 428 (N. D. Tex. 1951).

and systemization of Central-Penn's present operations. Additional savings are projected for the future. In particular, the larger and more efficient unit will be able to make better use of computers and other automatic devices. These machines have great capacity and high costs, and they entail high risks. The development of new computer services requires large investments in time, money and specialized staff such as programmers and systems engineers. Only large banking units handling transactions in large volume can realize the full potential of computers for efficient conduct of the bank's own operations and expanded services to correspondent banks, financial institutions and other customers. As the larger banking units obtain more advanced equipment with greater capacity and develop more complex services, Provident and Central-Penn will be at an increasing disadvantage.

3.14 Needs of Local Communities. The merger will benefit the local communities served by the branches of the two banks. Most branch customers are small customers, but their banking needs are many and varied. The small businessman, investor and entrepreneur may have more need of skilled banking service and advice than his larger rivals:

(a) Local professional and business men need billing, accounting and tax services.

(b) Local real estate developers, businessmen, and homeowners use construction loan services.

(c) Individuals and small businesses often need foreign services, advice and know-how.

(d) Persons who have accumulated funds need fiduciary and investment services.

In all these fields the combined bank will offer more than the present banks do separately. For example, Provident will bring its fiduciary skills (including its experience in

handling small accounts²³ and small businesses owned by trusts and estates) to Central-Penn branches. Experience with previous mergers shows a substantial need for these services.

3.15 Needs of the Business Community. In the Philadelphia business community there is a need for specialized and expert service in financial planning. This covers such matters as financing new and expanded plant and equipment; financing inventories and handling and financing accounts receivable; pension and profit sharing trusts; corporate trust and stock transfer services;²⁴ and export, import and foreign services, including advice and assistance in establishing distribution and production overseas. The merged bank will be in a much better position to meet these needs.

3.16 Needs of Other Financial Institutions. The financial community—savings institutions, insurance companies and the like—also need the financial and accounting services which the combined bank will supply. Examples are lock box services, mortgage warehousing and “on-line” accounting services for savings and loan associations. Again it should be noted that small financial institutions need a big bank even more than big institutions do.

3.17 Needs of Correspondent Banks and Their Communities. The community to be served includes the country correspondent banks, both inside and outside the four-county area. They look to their city correspondents not only for check clearing and collection, but for assistance in their own operations (for example, cost control, portfolio analysis and operations advice). They also look to their city cor-

23. As of December 30, 1965, Provident had under its administration nearly 7500 trust accounts, of which more than 30% had a book value of \$10,000 or less. More than 60% of its 586 guardianships involved \$10,000 or less.

24. Girard and First Pennsylvania are dominant in this field. The merged bank would scarcely be in a position to challenge them.

respondents for help in arranging local transactions of a size or complexity beyond their capacity. Central-Penn, with about \$20 million, and even Provident with about \$40 million of correspondent bank balances are too small to provide these services on the most economical basis. The combined bank will be more efficient and effective.²⁵ Thus, the benefits of the merger will flow throughout Pennsylvania and other communities served by the correspondent banks.

3.18 *Innovations.* In banking, unlike many other fields, innovations in service and improvements in operations are developed by the larger city institutions rather than the small country banks. Only the larger banks can afford to devote personnel to research and development. It would be impossible for the banking system to handle the flow of modern financial transactions without the innovations developed by the big banks since World War II. A single billion dollar institution such as the merged bank is much more apt to originate a new development of major benefit to the community than two smaller banks.

3.19 *The Needs of Philadelphia.* The larger bank will also be of direct benefit to the Philadelphia community:

(a) Philadelphia is handicapped by its "small town" reputation, and part of this reputation is its "short pants" banks. The kinds of businesses and entrepreneurs which Philadelphia needs to attract and retain rely on banks for flexible, imaginative and up-to-date service. When such a person arranges a financial transaction, he expects prompt, complete and effective bank service in carrying it out. In the Philadelphia area he wants the same kind and quality of service he would get from New York banks. He would

25. It is especially important to provide a new, larger unit in the correspondent bank field because of the dominance of the present leaders (First Pennsylvania and PNB), each of which has correspondent balances in the \$200 million range.

expect to get such service from a billion dollar bank, but not from a \$300 million bank. The very creation of the new bank resulting from the merger will improve Philadelphia's prestige in the world of business and finance.

(b) Because banks, as personal service organizations, have a large number of capable personnel, governmental, civic and charitable enterprises rely heavily on banks to staff their committees and boards and to provide solicitors and other workers.²⁶ The combined bank, with its larger staff and more efficient operation, will be better able to meet this need than the present banks, particularly Central-Penn which must operate on a "taut ship" basis insofar as personnel is concerned.

3.20 *Needs of the Philadelphia Port.* The larger bank will help attract business to the Philadelphia port, thus stimulating economic improvement in eastern Pennsylvania and the Delaware Valley, as well as Philadelphia itself. Provident now has "field men" working on an experimental basis with country banks and their customers in the Delaware Valley to encourage and assist them in export business. The merged bank will be better able to continue this costly program. It will also be more attractive to foreign banks and businesses, which are used to dealing with the very much larger banks in other countries.

3.21 *Alternatives if Merger is Enjoined.* Evaluation of community convenience and needs must include consideration of the alternatives if the merger is enjoined. These would include:

(a) The larger banks in Philadelphia and elsewhere would be insulated from bank competition. If Provident and Central-Penn cannot merge to challenge

26. Provident has run several public interest forums and seminars, and the merged bank would be in a position to expand this effort.

the leaders, it is difficult to foresee how they will be subjected to challenging competition in the future.

(b) The benefits described in the preceding sections of this brief would be indefinitely postponed. Neither bank can be expected to achieve a position comparable to the merged bank in the foreseeable future.

(c) Some banking services now being provided might be lost. While Central-Penn's present ownership and management are determined to continue to provide its present services and offer additional services, the competitive pressure to maximize earnings might, in the future, lead to the curtailment or elimination of operations considered to be high in cost or low in profit, (regardless of the community need for such services), thus leaving these particular operations to the big banks which would dominate these particular fields even more than they do at present.

***D. THE GOVERNMENT'S FIGURES AS TO MARKET SHARES AND CONCENTRATION ARE MEANINGLESS**

3.22 The Government argues that the merger may substantially lessen competition or tend to create a monopoly because, according to the Government:

(a) The Philadelphia area is "characterized by a heavy trend of concentration in commercial banking" (p. 41);

(b) The merger would give the merged bank an "undue percentage" of the commercial banking business in the area and would result in a "significant increase" in concentration (p. 47); and

(c) The merger would eliminate competition between Provident and Central-Penn (p. 51).

In advancing these arguments, the Government is relying blindly on the Supreme Court's decision in *Philadelphia*

National without considering the differences between the two situations or the actual facts of the instant case.

3.23 *Distinction Between Bank Mergers and Other Mergers—Trend Toward Concentration.* Arguments based on a “trend toward concentration” assume that one merger in an industry may trigger another. That assumption may have some validity in fields where mergers are regulated only by the Clayton Act. It has no relevance to bank mergers under the Bank Merger Act of 1966 for the reason that all bank mergers are subject to the approval of the regulatory agencies; which are directed not to approve those which will have a substantial anticompetitive effect unless that effect is clearly outweighed in the public interest.²⁷ Moreover, as demonstrated earlier in this brief, the merger of Provident and Central-Penn is the culmination—not the initiation—of a trend which has produced more—not fewer—full service city banks.

3.24 *Distinctions Between Bank Mergers and Other Mergers—Market Domination.* The recent decisions of the Supreme Court striking down horizontal mergers in other industries, *U.S. v. Von's Grocery Company*, 34 L.W. 4425 (1966), and *U.S. v. Pabst Brewing Company*, 34 L.W. 4516 (1966), rest on a fear of oligopoly. The fundamental premise of the decisions is that a decline in the number of competitors will lead to market domination by a few giants who will have the power to control production and prices and destroy competition (see 34 L.W. 4427; 34 L.W. 4518). This

27. The Bank Merger Act of 1966, unlike the Clayton Act, also gives the Attorney General advance notice of all bank mergers and the power to obtain an automatic stay by filing a complaint. The Attorney General has not hesitated to use this power. Since passage of the Bank Merger Act, he has commenced action against four bank mergers, including a merger in State College, Pa. involving two banks with combined assets of \$34 million. The State College banks abandoned the merger rather than incur the cost of defending the action.

premise has no application to the instant case for the fundamental reason stated in the Comptroller's opinion in this case: "Money, either in the form of savings, deposits, or credits, moves with great ease and rapidity; its flow is not impeded by political boundary lines." Because of the free flow of money across local, state and even national boundaries and among various financial institutions, it is absurd to rest an argument in this case on the notion of oligopoly. Presumably, if Von's Grocery dominated the retail grocery market in Los Angeles, there would be no alternative sources of groceries for the housewife and Von's could control the supply and the price. But if a single bank were to acquire as large a share of the Philadelphia commercial banking market as PNB did from 1928 to 1955, that bank would have no power to control the flow of money or the cost of credit in the Philadelphia metropolitan area because of the alternative sources available to borrowers.

3.25 Distinction Between Bank Mergers and Other Mergers—Internal Growth. Another premise underlying the recent Supreme Court decision in horizontal merger cases is that if substantial growth is economically desirable (as is clearly true in the case of both Provident and Central-Penn), it should be accomplished by internal expansion rather than merger. Again, this argument does not apply to bank mergers. In a circumscribed industry like commercial banking, if one competitor is to expand substantially, he can do so only at the expense of others. The total amount of money and credit is substantially controlled by the Federal Reserve Board and cannot be expanded by any single bank. One bank would grow faster than the others only by taking deposits from the others. But a bank is limited in its ability to do this by the intertwined restrictions of state and federal banking laws. It cannot offer interest on demand deposits; it cannot exceed the maximum interest rates permitted on time deposits; it cannot establish branches next to its competitors' branches if that will result in "over-

banking" or ruinous competition;²⁸ it cannot establish branches in outlying areas because of restrictions in state laws. The decisions in *Von's Grocery* and *Pabst Brewing* were based on the unspoken assumption that there was a practical alternative to merger in the form of internal growth. In a regulated business such as commercial banking, that assumption is often unjustified. It is unjustified in this case.

3.26 *Actual Concentration.* Insofar as the actual concentration in Philadelphia is concerned, the Federal Reserve Board states in its advisory report (p. 9) that:

"In this respect, it should be noted that the structure of commercial banking in the Philadelphia four-county area is not unduly concentrated as compared with the nation's major standard metropolitan statistical areas. As of June 30, 1964, the largest bank in the area controlled 21.8 per cent of the area's commercial bank deposits. In only 14 of 84 other major metropolitan areas did the largest bank have a smaller market share. The three largest Philadelphia banks' share was 54.7 per cent; only 16 major SMSA's had lower 3-bank concentration ratios."

The Banks will produce further data which will amply confirm the above statement.

3.27 *Increase in Concentration.* There will be no significant increase in the concentration ratio as a result of the merger. On the basis of the data in the Federal Reserve Board report (p. 8), the percentages of IPC deposits of the

28. "The legislature . . . did not exclude or intend to exclude competition between banks; it intended, inter alia, to exclude such competition as would likely weaken or destroy some banks in an overbanked community and thus weaken or injure the entire banking system, to the detriment of depositors, creditors, stockholders, and the public alike," *Dauphin Deposit Trust Company v. Myers*, 401 Pa. 230, 241 (1960).

seven largest banks before and after the merger are as follows:

Percentages of IPC Deposits

| <i>Before Merger</i> | | <i>After Merger</i> | |
|----------------------|------|---------------------|------|
| First Pennsylvania | 20.2 | First Pennsylvania | 20.2 |
| PNB | 17.6 | PNB | 17.6 |
| Girard | 16.2 | Girard | 16.2 |
| Fidelity | 12.8 | Provident | 15.1 |
| Provident | 9.7 | Fidelity | 12.8 |
| Continental | 5.8 | Continental | 5.8 |
| Central-Penn | 5.4 | IVB | 2.8 |

There is no significant increase in concentration in those figures.

3.28 "*Undue Percentage.*" The merger will not, as the Government avers, give the merged bank an "undue percentage" of the commercial banking business. The phrase "undue percentage" is, of course, lifted from the Supreme Court's opinion in *Philadelphia National* (374 U.S. 363). The Government ignores the fact that in *Philadelphia National* the phrase was applied to a share of "at least 30% of the commercial banking business," to be held by a bank which would have been half again as big as its nearest rival. The Supreme Court was concerned with the market power which such a bank would acquire from the merger.²⁹ In the instant case Provident will be the fourth bank, less than two-thirds the size of the leading bank. According to the Government, its share will be less than 15% of the artificially restricted market chosen by the Government as its

29. The Court cited the bench mark of 20% proposed by Kaysen & Turner, *Antitrust Policy* (1959) at page 133. In suggesting that percentage Kaysen & Turner were concerned with "market power," which they defined as the power to "behave persistently in a manner different from the behavior that a competitive market would enforce on a firm facing otherwise similar cost and demand conditions" (p. 75). No one could contend that Provident or Central-Penn has any such power now or will have any such power after the merger.

statistical base. In the context of commercial banking in Philadelphia, such a share cannot be characterized as "undue." The fact that smaller percentages have been found unlawful in horizontal merger cases in fields other than banking (*Brown Shoe*, *Von's Grocery*, and *Pabst Brewing*), is irrelevant for two reasons:

(a) In those cases it can be assumed that the percentages were an accurate measure of the merged company's share of a market with economic validity. In the instant case the percentage does not relate to a valid market because the Government's market definition fails to take into account banks outside the four-county area and other financial institutions both inside and outside the area.

(b) Banking (unlike shoes, groceries³⁰ and beer) is regulated to meet the convenience and needs of the community and, as shown earlier in this brief, the Philadelphia community will gain more from the creation of an additional billion dollar bank than it may lose by the elimination of the separate corporate entity of Central-Penn.

3.29 The Government cannot seriously argue that the merged bank will have an "undue" percentage of the banking business. The Government's pretrial brief adopts the figure of 14% of the deposits of banks headquartered in the four-county area (par. 132). This figure would drop to about 12% if the other banks in the Philadelphia Standard Metropolitan Statistical Area were taken into account. It would drop further if the banks in the four adjacent Pennsylvania counties and in Wilmington and Trenton were added to the base. And it would indeed become miniscule if competitive banks in Pittsburgh, New York and other financial centers were included, as they should be. By compari-

30. The obvious difference between banking and groceries was cited by Justice Holmes to justify state insurance of bank deposits in *Noble State Bank v. Haskell*, 219 U. S. 104, 112 (1910).

son, the market share of Manufacturers Hanover Trust Company was 13.9% of deposits in the New York market and 4.11% of the deposits in the national market. The District Court for the Southern District of New York, in *U.S. v. Manufacturers Hanover Trust Co.*, 240 F. Supp. 867, 932 (1965), held that the Manufacturers Hanover share did not warrant a conclusion that the merger was inherently illegal.³¹ Congress agreed. The Manufacturers Hanover merger is one of those which, under Section 2(a) of the Bank Merger Act of 1966, is "conclusively presumed to have not been in violation of any antitrust laws other than [Section 2 of the Sherman Act]." Congress enacted this conclusive presumption after the District Court had ruled against the merger and the parties had reached agreement on a method of divestiture. Clearly, Congress was not alarmed by a market share of less than 15% in the banking field.

E. THE COMPETITION BETWEEN PROVIDENT AND CENTRAL-PENN IS INSIGNIFICANT

3.30 *The Banks Have Complementary Fields of Specialization.* By reason of the difference in their origins and development, Provident and Central-Penn historically specialized in different fields. Thus:

(a) Provident holds more than \$2 billion in trust assets, whereas Central-Penn's trust department holds only about \$140 million, despite the fact that it was established many years ago and has been actively promoted for the last ten years. Provident each year increases its trust assets by more than twice Central-Penn's total amount.

(b) Provident has an active, growing international division, whereas Central-Penn has not developed international business of consequence.

31. The court later held the merger illegal because of the substantial competition between the merged banks, 240 F. Supp. 867.

(c) Provident has one of the two largest construction loan departments among Philadelphia banks, accounting for about \$20 million of its loans, whereas Central-Penn's construction loans total only about \$3 million a large number of them being concentrated in lower Bucks County where Provident is not represented.

(d) Central-Penn buys the bulk of its consumer paper from local automobile dealers, many of the loans being purchased without recourse so that the loans become, in effect, direct loans from the bank to the consumer. At April 30, 1966, Central-Penn had approximately \$41 million of loans purchased from local auto dealers and \$8 million of loans under automobile floor plans with local dealers. Provident, on the other hand, purchases most of its consumer paper from sources outside the four-county area (and indeed outside the State of Pennsylvania). Many of these loans are purchased on a full recourse basis so that the loans are, in effect, from the bank to the dealer rather than to the consumer.

3.31 *The Banks Have Complementary Branch Systems.* By reason of the location of their branches, Provident and Central-Penn serve different local communities. Both the Comptroller and the Federal Reserve Board recognized this fact, although the Board qualified its opinion to the extent of stating that there was a significant degree of competition between individual offices of the two banks in 10 locations. The locations are listed on page 4 of the Board's report. Upon receipt of the Board's report, the Banks engaged First Research Corporation of Miami, Florida, to plot the actual service areas of the branches singled out by the Board as being in competition (with the exception of the head offices, the offices on 17th Street which are essentially annexes of the head offices, and the offices on 12th Street and at Juniper and Market Streets). The First

Research Corporation's report confirmed the Banks' belief that there is in fact no substantial competition between the branches covered by their survey. It was submitted to the Comptroller and the Attorney General, and a copy thereof is being supplied to the Court concurrently with the filing of this brief. The Banks submit that the First Research Corporation's report demonstrates that the Federal Reserve Board's advisory report was based on a misapprehension as to the extent of competition between the Provident and Central-Penn branch systems. This, in turn, tends to invalidate the adverse conclusion expressed by the Federal Reserve Board.³² The Banks will produce at trial maps and studies showing the areas served by all their branches and demonstrating that the branch systems of the two banks are complementary rather than competitive with one another.

3.32 Other Choices Available to Banks' Customers. While the Banks are concededly in competition to some degree for the customers of their head offices, such competition is not substantial in relation to the other choices available to such customers:

(a) Every customer who calls at the head office of Provident or Central-Penn can equally easily call at the head office of First Pennsylvania, PNB, Girard, Fidelity, and Lincoln National—none of which is more

32. While the Federal Reserve Report concludes that the overall effect of the merger would be "significantly adverse," the bulk of its contents suggests a different conclusion. The Board noted that Provident and Central-Penn are "complementary rather than competitive" in branch office locations and services, that "even where the offices of the two banks do compete there is usually an office of a larger bank in the same area," that "the variance in the legal lending limit of the two banks tends to lessen competition for the larger commercial loans," that Philadelphia banks compete not only with each other but with commercial banks in New York and Pittsburgh, and that they also face competition from other financial institutions. The Board's unfavorable conclusion after this list of favorable factors seems to rest largely on its mistaken finding as to the competition between branches.

than six blocks away. He also has easy access to the Philadelphia office of Brown Brothers Harriman & Co. and to offices of Continental and IVB which, though officially designated as branches, are staffed by senior management officers of those banks.

(b) If such a head office customer wished to "shop around" in the neighborhood of Philadelphia, he could readily find additional banks. If he were located in center city, he could cross the river to Camden. In much of Delaware County, Wilmington is more readily available than Philadelphia. Other parts of Delaware County are closer to West Chester and even Downingtown in Chester County. Upper Montgomery County is closer to Reading in Berks County. Upper Bucks County is closer to Allentown in Lehigh County or Bethlehem in Northampton County. Lower Bucks County is closer to Trenton and Burlington in New Jersey. For little if any additional effort any Philadelphia customer can deal with the banks in New York. They advertise their checking service and the availability of their mortgage funds to commuters in the Paoli local.

(c) A large proportion of head office customers are of sufficient importance to be subject to regular solicitation from banks located outside the four-county area, particularly in New York. The business of these large customers was recognized to be in the national market—rather than the local market—in *Manufacturers Hanover*, 240 F. Supp. 867, 920.

(d) Customers of Provident and Central-Penn with residences or offices outside the four-county area have a choice of banks in the localities in which they are located.

3.33 Deposits and Loans Allocable to National Accounts and Those Outside Four-County Area. Attached

to this brief as Exhibit B is a chart showing with respect to Central-Penn the deposits and loans allocable to national accounts and those outside the four-county area. The figures shown are subject to further investigation and refinement, but it is not expected that this will result in anything other than minor changes between now and the trial.³³ The schedule requires a few words of explanation:

(a) Column 1 shows Central-Penn's deposits and loans as of April 30, 1966 in each of the categories listed on the report of Condition which Central-Penn must file on the call of the Comptroller of the Currency.

(b) Column 2 lists the total dollars of accounts in the categories which were held to be in the national market in the *Manufacturers Hanover* case.

(c) Column 3 lists the total dollars of accounts which are not within the categories approved in *Manufacturers Hanover* but which, in Central-Penn's judgment, are in the national market because of their individual characteristics. Each such account was personally reviewed by the responsible bank officer. If necessary, all the bank officers will be called to testify at the trial.

Column 3 also shows the total of Central-Penn's savings deposit accounts and saving certificates in excess of \$10,000. Savings accounts of this size are solicited by savings institutions throughout the United States, particularly in California, and should be considered as in the national market.³⁴

33. A similar chart with respect to Provident is attached as Exhibit C.

34. The opinion of Judge McMahon in *Manufacturers Hanover* listed savings deposits as in the local market. However, this question was of little importance in the case because Hanover had no savings deposits whatever. In addition, national solicitation of savings deposits has increased enormously since his opinion because of the sharp rise in interest rates.

(d) Column 4 lists those accounts, not already excluded as national accounts, which are located outside the four-county area.

(e) Column 5 shows the dollars remaining after exclusion of national and outside accounts.

3.34 *Residual Competition Between Provident and Central-Penn.* As appears from Exhibit B, the maximum amount of Central-Penn's \$332 million of deposits and \$227 million of loans which could be considered in measuring Central-Penn's competition with Provident would be about \$153 million and \$79 million, respectively. A large proportion of Central-Penn's \$49 million of automobile dealer paper should be eliminated from this total because it is obtained from different areas than Provident's automobile dealer paper. A large proportion of the \$130 million of deposits and \$45 million of loans at the Central-Penn branches which do not compete with Provident should also be eliminated. After these eliminations, the residue of Central-Penn's deposits and loans for which Provident can be said to compete is insignificant.

3.35 *Competition From Other Financial Institutions.* Competition between Provident and Central-Penn must be evaluated in the light of competition from other financial institutions. It is impossible to measure this competition with precise accuracy because the figures are not available for many institutions with respect to the four-county area.³⁵ However, at the trial the Banks will offer information which will fairly demonstrate that when other financial institutions are considered, the effect of the proposed merger on competition would be—as the Comptroller found—"miniscule."

35. The absence of these figures is a good indication that the four-county area is not a natural market.

IV. CONCLUSION

The Government's case, as outlined in its pretrial brief, fails to show that the merger may substantially lessen competition and fails to challenge the Comptroller's findings as to the benefits of the merger in enhancing competition and meeting the convenience and needs of the community to be served.

Respectfully submitted,

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Dated: August 5, 1966.

EXHIBIT A

The following is a paragraph-by-paragraph response to the Government's Pretrial Brief. The headings follow those used by the Government.

I. INTRODUCTION

1-5. The Banks agree with the statements in paragraphs 1 through 5.

6. The Government states its position to be that the proposed merger violates Section 7 of the Clayton Act, and says that this position is "contested." While the Banks believe that the merger would not violate Section 7, that is not an issue in this case. The issue in this case is whether the Comptroller acted arbitrarily, capriciously or unreasonably in finding that the merger meets the statutory criteria of the Bank Merger Act of 1966.

II. APPLICABLE STATUTES

7-8. The Banks disagree that Section 7 of the Clayton Act is applicable. They agree that the Bank Merger Act of 1966 is applicable. Notably, the Government has not quoted the Bank Merger Act in full, and has omitted the portion which requires that this Court, in judging the merger, must apply the identical standards which the Comptroller is directed to apply.

III. THE PROPOSED MERGER

9-11. The statements in paragraphs 9 through 11 are correct.³⁶

36. The Government has not accurately stated the conclusions of the Federal Reserve Board and the Attorney General as to competitive effect. The conclusion of the Federal Reserve Board was that the adverse effect of the proposed merger would be "significant"; the Attorney General said it would be "important and considerable".

IV. THE DEFENDANTS

12-33. The statements in these paragraphs are correct, except for the contention in paragraphs 13 and 24 that certain assets of Provident and Central-Penn are "attributable" to mergers. It is true that the assets of the banks which merged into Provident and Central-Penn totalled the figures given. However, it is incorrect to "attribute" the Banks' present position to those assets. No customer is chained to his bank. The loans outstanding, for example, at Northern Trust in 1948 at the time of its merger into Provident have long since been replaced by other loans to other customers.

Certain of these paragraphs (20-2, 31-3) contain conclusory statements concerning the Banks' operations, which the Government says are admitted in the Application and in the documents produced by the Banks pursuant to the Government's Rule 34 Motion. No specific reference is made by the Government to any particular document within the mass produced by the Banks. While admitting the general correctness of the statements, the Banks disclaim any admission as to specific characteristics (here and elsewhere in the brief), such as "sound," "strong," "of the most modern and efficient" and so forth. The correctness of such characteristics can be judged only in context with the conclusions which the Government seeks to draw therefrom, and the Government has not stated what such conclusions are.³⁷

V. STATEMENT OF THE ISSUES

34-36. The Government would have the Court treat this as a traditional injunction action under Section 7 of the Clayton Act, and has framed the "issues" along Section 7 lines. However, this case is governed by the Bank Merger Act of 1966, not Section 7. To the extent the Government's

37. Paragraph 21 contains a typographical error. Provident's downtown office was opened in 1966.

"issues" are pertinent under the Bank Merger Act, they are discussed in the Banks' brief.

Particular Issues Under the Bank Merger Act

37. This paragraph again reveals the Government's basic misconception—namely, that this is a Section 7 case for which the Bank Merger Act provides "special defenses." The Government refuses to recognize that Congress has enacted particular standards for bank mergers.³⁸

38-71. These paragraphs are an extended discourse on the technical question whether this suit is brought "under" the antitrust laws or "under" the Bank Merger Act. This is all beside the point. Conceding for the sake of argument that the Government sues under the antitrust laws, nevertheless the standards to be applied in this case are those provided in the Bank Merger Act.

72-79. *Burden of Proof.* This legal issue is discussed in full in the Banks' brief (Paragraphs 2.6-2.7). The Government must prove its case. If the Government makes no effort to rebut the Comptroller's findings, which are presumptively valid, the findings must stand.

80-86. *Review de novo.* This legal issue is also discussed at length in the Banks' brief (Paragraphs 2.3-2.5). The Government asks the Court to substitute its judgment for the Comptroller's on the question whether this merger is in the public interest. To do so would exceed the accepted scope of review of administrative decisions. It would also exceed the Court's judicial power under the Constitution.

38. It should be noted that in subparagraph b the Government has misquoted the Banks' answer. While contending that the merger is pro-competitive, the answer states that "any" anticompetitive effect is clearly outweighed by the public interest. The Government substitutes "the" for "any", an unwarranted attempt to infer that the Banks have conceded anticompetitive effect.

VI. ARGUMENT**A. Line of Commerce**

This imaginary issue, again growing from the misconception that this is a Section 7 case, is dealt with in the Banks' brief (Paragraphs 2.10-2.14). The phrase "line of commerce" is not in the statute.

87-89. The statements concerning the services which can be offered by commercial banks are correct. It should be noted, however, that the demand deposit and checking account are increasingly less "unique," have diminished in importance, and may virtually disappear.³⁹ Economists are already talking about the "checkless society" in which transactions will be handled by credit cards and managed by central computer stations.

It is also true that most large commercial banks offer most of the "cluster of services" described, although, as with Provident and Central-Penn, the extent and effectiveness of individual services varies from bank to bank. It is likewise true, as the Government states in paragraph 89, that banks face competition across the board from other financial institutions. It is this competition which the banks contend should be taken into account in this case.

90. The Banks will introduce testimony at the trial to demonstrate that the Government's contention that commercial banks in today's market are insulated from competition for small loans and savings deposits is absurd.

91-102. These paragraphs are intended to show that Congress omitted "line of commerce" from the Bank Merger Act by mistake; and that the Act should be interpreted as though the phrase were inserted. To the extent such an argument deserves answer, it has been made in the Banks' brief (Paragraphs 2.10-2.14). As indicated there, the phrase was omitted to prevent fragmenting—i.e., to prevent the

39. In some states, mutual savings banks may accept demand deposits.

Government from singling out a minor aspect of a bank's business when the effect of the merger as a whole would be beneficial. The Government attempts to discredit Senator Robertson's explanation of this point by claiming that he was expressing his own views. The same can be said for all the opponents of the Bill, whose remarks are quoted at length throughout the Government's brief. Indeed, when Senator Robertson's statements seem to favor the Government's position, the Government quotes him with approval. (Government brief, par. 70).

B. Section of the Country

103. The Banks agree entirely with the Government's statement of the importance of convenience in banking. At the trial, the Banks will show that by reason of the convenience factor, their branch systems are not in competition.

104. This table is not an entirely accurate representation. As filed, the Government's interrogatories asked the Banks, in effect, for the names and addresses of all their depositors (broken down according to numerous sizes of account), so that the Government could compute the percentage located within the four-county area. This would have imposed an impossible burden on the Banks, particularly with respect to accounts of \$10,000 or less, which number in the hundreds of thousands. It was agreed that the Banks would analyze their accounts in excess of \$10,000 to determine the total dollars of such accounts originating outside the four-county area. This was subsequently done, and the figures were furnished to the Government. In addition, the Banks advised the Government that because of the tremendous burden, they were unable to make a comparable analysis for accounts under \$10,000 and therefore would make no claim that any of those customers are located outside the four-county area.

The Government's table ignores the Banks' figures as to accounts in excess of \$10,000 originating outside the four-

county area. It simply shows the percentage of the Banks' accounts in various categories which are less than \$10,000 and assumes that all these customers are located inside the four-county area. While most of these customers are in fact located inside the four-county area, the dollars involved in their accounts are a much lesser percentage than those shown in the Government's table. The percentage of total deposits and loans represented by accounts under \$10,000 is:

| | <i>Provident</i> | <i>Central-Penn</i> |
|----------------|------------------|---------------------|
| Total deposits | 26% | 32% |
| Total loans | 24% | 31% |

The Government says its table evidences that "The great bulk of the banks' customers, those 'that are neither very large nor very small,' find it convenient to do their banking in the four-county area." This statement is difficult to understand. Necessarily, since all Provident customers bank at Provident, they *all* find it convenient to bank here. Since the table is concerned with accounts from 0 to \$10,000, it relates only to Provident's smallest customers.

105. These figures are taken from the Banks' analysis of accounts over \$10,000 and are correct, except that the figures concerning loans to individuals are, like the table above, simply the percentages represented by accounts under \$10,000.

106. The statement in this paragraph is correct, except that the Federal Reserve Board was careful to point out that the Banks encounter significant competition from banks outside the four-county area and significant competition from other financial institutions within the area. (Advisory opinion, page 10).

107. The statement that the State of Pennsylvania restricts branching of banks to contiguous counties is correct, although it does not follow that the arbitrarily drawn four-county area is a meaningful area for measuring com-

petitive effects. The Pennsylvania law is one of the reasons why this merger should be approved.

108-109. We assume the Government's contention that the proposed merger will affect competition "anywhere in the United States" is not to be taken seriously. The combined bank will hold about one-quarter of one per cent of the nation's commercial bank assets.

110. This paragraph gives the Government's reasons for choosing the four-county area as the "section of the country" within which, under the Bank Merger Act, the Government must show a substantial lessening of competition. The Banks' position in this regard is fully set out in its brief (Paragraph 2.9).

C. Effect on Competition

111-114. The Banks agree that the statistics in this paragraph are accurate, except for paragraph 112, which is still being checked;⁴⁰ and except that, as stated earlier, it is impossible to "attribute" particular bank assets or liabilities to a merger made many years ago. In addition, the Government is presumably referring in paragraph 111 to banks which have offices within the four-county area. As pointed out in the Banks' brief, the number of banks who actively solicit business in this area is far greater.

115. It is agreed that on more than one occasion both banks have had discussions, of varying degrees of seriousness, concerning mergers with other banks.

116. The statistics are accurate.

117-124. These paragraphs are a rehearsal of the Government's notion that there has been a trend toward con-

40. The Banks have no reason to believe that the statistics in paragraph 112 will prove to be inaccurate.

centration in Philadelphia banking. This is fully answered in the Banks' brief (Paragraphs 3.4-3.8, 3.23). There are more banking offices in the Philadelphia area today than there were 25 years ago, and, more important, more full-line commercial banks offering better services.

125-128. The statistics are accurate.

129-135. These paragraphs argue that the combined bank would hold an "undue percentage share" of the market which, under the Section 7 cases, would be unlawful. Here again, a full answer is given in the Banks' brief (Paragraphs 3.28-3.29).

136-138. The Government here argues that "all competition" between Provident and Central-Penn will be eliminated by the merger. It makes no effort to analyze the extent of that competition. The Banks concede that to the extent competition exists between them, it will, of course, be eliminated by the merger. The Banks will show, however, that upon analysis this competition is insignificant. The merger will not adversely affect the competitive picture in Philadelphia.

EXHIBIT B

CENTRAL-PENN NATIONAL BANK
DEPOSITS & LOANS ALLOCABLE TO CUSTOMERS IN NATIONAL MARKET &
OUTSIDE FOUR-COUNTY AREA

APRIL 30, 1966

| Category | Amounts Allocated to National Market | | | | |
|-----------------|--|--|---|--|--------------------------|
| | Total Amounts Before Allocation 1 | National Market Defined in Manufacturers- Hanover Case 2 | Additional Amounts Attributable to Customers Considered in National Market 3 | Additional Amounts Attributable to Customers Outside Four-County Area 4 | Residual Amounts 5 |
| Demand Deposits | | | | | |
| IPC | \$177,795,454. | \$ 79,763,307. (1) | \$ 6,375,597. | \$ 449,601. | \$ 91,206,949. |
| United States | 9,017,064. | 8,835,276. (1) | —0— | —0— | 181,788. |
| States | 3,834,172. | 3,412,094. (1) | —0— | —0— | 422,078. |
| Banks | 22,234,283. | 20,107,517. (1) | 2,126,766. | —0— | —0— |
| Other | 2,783,695. | —0— | —0— | —0— | 2,783,695. |
| Total Demand | \$215,664,668. | \$112,118,194. | \$ 8,502,363. | \$ 449,601. | \$ 94,594,510. |

| | | | | | |
|-----------------------|-----------------------|-----------------------|-----------------------|----------------------|-----------------------|
| Time Deposits | | | | | |
| IPC | | | | | |
| Time Open | \$ 5,815,643. | \$ 5,815,643. (2) | \$ — | \$ — | \$ — |
| C/D's | 13,412,379. | 13,412,379. (2) | — | — | — |
| Savings Accts. | 68,941,626. | — | 19,086,299. (4) | — | 49,855,327. |
| Savings Certif. | 11,983,091. | — | 5,162,028. (4) | — | 6,821,063. |
| United States | — | — | — | — | — |
| States | 13,599,864. | 13,404,297. (1) | — | — | 195,567. |
| Banks | 1,008,300. | 1,000,000. (1) | 8,300. | — | — |
| Other | 1,656,422. | — | — | — | 1,656,422. |
| Total Time | \$116,417,325. | \$ 33,632,319. | \$ 24,256,627. | \$ — | \$ 58,528,379. |
| TOTAL DEPOSITS | \$332,081,993. | \$145,750,513. | \$ 32,758,990. | \$ 449,601. | \$153,122,889. |
| Loans | | | | | |
| Real Estate | \$ 20,336,134. | \$ 12,979,903. (1)* | \$ — | \$ 469,851. | \$ 6,886,380. |
| Financial Instit. | 19,501,725. | 19,501,725. (2) | — | — | — |
| Securities | 1,006,339. | 1,006,339. (2) | — | — | — |
| Farmers | 7,600. | — | — | — | 7,600. |
| Comm'l. & Indust. | 106,569,982. | 77,367,299. (1) | 194,140. | 3,031,112. | 25,977,431. |
| Consumer | | | | | |
| Direct | 14,617,362. | — | — | — | 14,617,362. |
| Dealers | 46,796,429. | — | 17,939,595. | 4,554,204. | 24,302,630. |
| Single Payment | 12,842,676. | 6,321,644. (3) | — | — | 6,521,032. |
| Other | 5,159,125. | 4,341,270. (1) | — | — | 817,855. |
| TOTAL LOANS | \$226,837,372. | \$121,518,180. | \$ 18,133,735 | \$ 8,055,167. | \$ 79,130,290. |

(1) All \$100,000 or more; (2) All accounts; (3) All \$25,000. or more; (4) All \$10,000 or more.
 * Includes loans on properties inside and outside four-county area.

EXHIBIT C

PROVIDENT NATIONAL BANK
DEPOSITS & LOANS ALLOCABLE TO CUSTOMERS IN NATIONAL MARKET &
OUTSIDE FOUR-COUNTY AREA

APRIL 30, 1966

| Category | Total Amount Before Allocation 1 | Amounts Allocated to National Market National Market Defined in Manufacturers- Hanover Case 2 | Additional Amounts Attributable to Customers Considered in National Market 3 | Additional Amounts Attributable to Customers Outside Four-County Area 4 | Residual Amounts 5 |
|---|---|--|--|--|--------------------------|
| Demand Deposits | | | | | |
| IPC | 352,220,801.79 | 168,987,035.47 (1) | 14,006,134.55 | 4,758,078.06 | 164,469,553.71 |
| U.S. Govern- ment | 15,779,309.87 | 15,551,371.03 (1) | —0— | —0— | 227,938.84 |
| State & Political Subs. | 10,607,134.28 | 9,590,886.25 (1) | 135,328.41 | —0— | 880,919.62 |
| Banks | 44,895,372.63 | 42,420,111.54 (1) | 2,475,261.09 | —0— | —0— |
| Others | 6,097,036.94 | —0— | —0— | —0— | 6,097,036.94 |
| Subtotal before Adjustments* | 429,599,655.51 | 236,545,404.29 | 16,616,724.05 | 4,758,078.06 | 171,675,449.11 |
| Net Adjust- ment for lost checks, in- correct in- coding of checks & de- posits, etc. | (14,330.83) | | | | (14,330.83) |
| TOTAL DEMAND | 429,585,324.68 | 236,549,404.29 | 16,616,724.05 | 4,758,078.06 | 171,661,118.28 |

Exhibit C to Pre-Trial Brief

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| Time Deposits IPC | 34,284,929.96 27,706,615.51 | 34,284,929.96 (2) 27,706,615.51 (2) | —0— —0— | —0— —0— | —0— —0— |
|---|--------------------------------|--|-------------------|--------------|----------------|
| Time Open C/D's Savings a/c's & Cfts. | 122,644,470.16 | —0— | 49,774,336.07 (4) | —0— | 72,870,134.09 |
| Subtotal—IPC | 184,636,015.63 | 61,991,545.47 | 49,774,336.07 | —0— | 72,870,134.09 |
| U.S. Government State & Political Subs. | 54,961.73 | —0— | —0— | —0— | 54,961.73 |
| Banks | 17,045,736.88 | 15,520,018.30 (1) | —0— | 20,378.24 | 1,505,340.34 |
| Others | 2,505,000.00 | 1,760,000.00 (1) | 745,000.00 | —0— | —0— |
| Subtotal before Adjustments | 2,059,539.59 | —0— | —0— | —0— | 2,059,539.59 |
| Net Adjustment for unposted & Deferred Items | 206,301,253.83 | 79,271,563.77 | 50,519,336.07 | 20,378.24 | 76,489,975.75 |
| TOTAL TIME DEPOSITS PER STATE-MENT OF CONDITION, APRIL 30, 1966 | 62,161.50 | 79,271,563.77 | 50,519,336.07 | 20,378.24 | 76,552,137.25 |
| | 635,948,740.01 | 315,820,968.06 | 67,136,060.12 | 4,778,456.30 | 248,213,255.53 |

Exhibit C to Pre-Trial Brief

| Category | Total Amount Before Allocation 1 | National Market Defined in Manufacturer's Handover Case 2 | Amounts Allocated to National Market Additional Amounts Attributable to Customers Considered in National Market 3 | Additional Amounts Attributable to Customers Outside Four-County Area 4 | Residual Amounts 5 |
|----------------------|---|---|---|--|--------------------------|
| Loans | | | | | |
| Real Estate | \$ 24,071,127.27 | \$ 4,660,154.75 (1)* | \$ 77,512.00 | \$ 89,945.63 | \$ 19,243,564.89 |
| Financial | | | | | |
| Instit. | 43,339,192.68 | 43,339,192.68 (2) | —0— | —0— | —0— |
| Securities | 23,770,060.28 | 23,770,060.28 (2) | —0— | —0— | —0— |
| Farmers | 263,631.79 | 248,366.53 | —0— | —0— | 15,265.26 |
| Comm'l. & Indust. | 194,242,225.84 | 149,058,978.64 (1) | 1,604,105.22 | 423,968.75 | 43,155,173.23 |
| Consumer | | | | | |
| Direct | 27,491,708.89 | —0— | * 54,524.70 | —0— | 27,437,184.19 |
| Dealers | 53,278,648.85 | 50,490,719.61 (1) | 1,279,062.04 | 167,308.62 | 1,341,558.58 |
| Single Payment | 37,648,492.05 | 19,545,665.25 (3) | 681,249.16 | 1,523,511.50 | 15,898,066.14 |
| Other | 7,938,433.72 | 4,722,951.44 (1) | —0— | —0— | 3,215,482.28 |
| TOTAL | \$412,043,571.37 | \$295,836,089.18 | \$3,696,453.12 | \$2,204,734.50 | \$110,306,294.57 |
| LOANS | | | | | |

(1) All \$100,000 or more; (2) All accounts; (3) All \$25,000 or more; (4) All \$10,000 or more.
 * Includes loans on properties inside and outside four-county area.

**BANKS OPERATING OFFICES IN PHILADELPHIA
AND ADJACENT COUNTIES
("THE FOUR-COUNTY AREA")**

**BANKS PERMITTED BY STATUTE TO
BRANCH INTO THE AREA**

BANKS IN ADJACENT COMMUNITIES

A. RELEVANT STATUTORY PROVISIONS

1. *Membership in Federal Reserve.* All national banks are required to be members of the Federal Reserve System. State banks may elect to become members. The term "member bank" includes national banks and state member banks: 12 U.S.C.A. §§221, 282, 321; 7 P.S. §203.

2. *Reserve Requirements for Member Banks.* Member banks are required by the Federal Reserve Act to maintain non-interest bearing reserve balances in available funds with the Federal Reserve bank in their Reserve City. The Act provides different reserve requirements for member banks which are located in the Reserve City (generally known as "reserve city banks") than for other member banks (known as "country banks"): 12 U.S.C.A. §462. The current reserve requirements are (12 CFR §204.5, as amended June 27, 1966, 31 Fed. Reg. 9103):

City Banks — 16½% of net demand deposits
plus
4% of savings deposits, 4% of
other time deposits up to \$5 mil-
lion, and 5% of such deposits in
excess of \$5 million.

Country Banks — 12% of net demand deposits
plus

4% of savings deposits, 4% of
other time deposits up to \$5 mil-
lion, and 5% of such deposits in
excess of \$5 million.

3. Reserve Requirements for Non-Member Banks.

Pennsylvania banks which are not federal reserve members are required to maintain reserves equal to 12% of demand deposits and 4% of time deposits: 7 P.S. §703; Pa. Dept. of Banking Regulations §1(a). The bank can invest up to 40% of its reserve fund in obligations of the United States, the Commonwealth of Pennsylvania, or any political subdivision or public body of the Commonwealth. The remainder may be deposited with another bank qualified to act as a reserve agent. 7 P.S. §§702, 704, 610; Pa. Dept. of Banking Regulations §1(b).

4. *Provisions as to Branching.* A Pennsylvania bank is permitted, subject to the approval of the Pennsylvania Department of Banking, to establish *de novo* branches in the county where its principal place of business is located or in a county contiguous thereto. If the location is outside the city, incorporated town, borough or township where the principal place of business is located, the bank is required to give written notice of the filing of its application to each other bank whose principal place of business is located in the county where the proposed branch is to be located: 7 P.S. §904(b).

A national bank may, with the approval of the Comptroller of the Currency, establish *de novo* branches at any point within the state in which the bank is located if such establishment is authorized to state banks by the state in question: 12 U.S.C.A. §36.

Upon merger or consolidation, the resulting institution may retain all offices of the constituent institutions which are located in the same county as the principal place of business of the resulting institution or in a contiguous county: 7 P.S. §904(a); 12 U.S.C.A. §36.

B. PHILADELPHIA COUNTY

1. Branching Areas

Philadelphia Banks Can
Branch Into These CountiesPhiladelphia
Delaware
Montgomery
BucksBanks With Principal Offices
In These Counties Can
Branch In PhiladelphiaDelaware
Montgomery
Bucks

2. (a) Reserve City Banks

Total Resources
(Thousands)

| | |
|--|-------------|
| The First Pennsylvania Banking and Trust Company (First Pennsylvania | \$1,638,316 |
| The Philadelphia National Bank (PNB) | 1,490,935 |
| Girard Trust Bank (Girard) | 1,137,927 |
| Fidelity-Philadelphia Trust Company (Fidelity) | 884,189 |
| Provident National Bank (Provident) | 711,206 |
| Central-Penn National Bank (Central-Penn) | 371,003 |

2. (b) Other Banks

| | |
|---|---------|
| Brown Brothers Harriman & Co. (Brown Bros.) ^{1/2/} | 318,945 |
| Frankford Trust Company (Frankford) ^{2/} | 73,741 |
| Lincoln National Bank (Lincoln) ^{3/} | 13,798 |
| The Citizens Bank (Citizens) ^{2/} | 6,188 |
| Pennsylvania Warehousing and Safe Deposit Co. (Pa. Warehousing) ^{2/4/} | 6,077 |
| Sonsitaly Bank and Trust Company (Sonsitaly) ^{2/} | 5,667 |
| The Marian Bank (Marian) ^{2/} | 1,609 |

1. Private bank with offices in Philadelphia, New York and Boston.

2. Non-member of Federal Reserve.

3. While technically within the definition of a city bank, this institution has been excused from the city bank reserve requirements by administrative action.

4. Specialized institution doing a limited commercial banking business.

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*Banks in Adjacent Communities***3. Number of Banking Offices*****Philadelphia Banks***
(principal offices and
branches)

| | |
|--------------------|----|
| First Pennsylvania | 33 |
| PNB | 15 |
| Girard | 26 |
| Fidelity | 25 |
| Provident | 20 |
| Central-Penn | 13 |
| Brown Bros. | 1 |
| Frankford Trust | 3 |
| Lincoln | 1 |
| Citizens | 3 |
| Pa. Warehousing | 1 |
| Sonsitaly | 1 |
| Marian | 1 |

Montgomery County Banks
(branches)

| | |
|------------------|----|
| Continental | 20 |
| IVB | 10 |
| Cheltenham Natl. | 2 |
| | — |
| | 32 |

Camden County, N.J. Banks
(branches)

| | |
|--------------------|---|
| First Camden Natl. | 1 |
|--------------------|---|

C. DELAWARE COUNTY

1. Branching Areas

*Banks With Principal Offices
Delaware County Banks Can In These Counties Can
Branch Into These Counties Branch Into Delaware County*

Delaware
Philadelphia
Montgomery
Chester

Philadelphia
Montgomery
Chester

2. Banks

*Total Resources
(Thousands)*

Delaware County National Bank (Del. Co. Natl.) \$111,315

3. Number of Banking Offices

*Delaware County Banks
(principal offices and
branches)*

Del. Co. Natl. 8

*Philadelphia Banks
(branches)*

| | |
|--------------------|----|
| First Pennsylvania | 7 |
| PNB | 6 |
| Girard | 14 |
| Fidelity | 11 |
| Provident | 6 |
| Central-Penn | 1 |
| | — |
| | 45 |

*Montgomery County Banks
(branches)*

| | |
|-----------------|---|
| Continental | 4 |
| IVB | 1 |
| Bryn Mawr Trust | 1 |
| | — |
| | 6 |

*Chester County Banks
(branches)*

| | |
|------------------------------|---|
| Natl. Bank of Chester Co. | 1 |
|------------------------------|---|

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*Banks in Adjacent Communities***D. MONTGOMERY COUNTY****1. Branching Areas****Montgomery County Banks
Can Branch Into These
Counties**

Montgomery
Philadelphia
Delaware
Bucks
Chester
Berks
Lehigh

**Banks With Principal Offices
In These Counties Can
Branch Into Montgomery
County**

Philadelphia
Delaware
Bucks
Chester
Berks
Lehigh

2. Banks**Total Resources
(Thousands)**

| | |
|---|-----------|
| Continental Bank and Trust Company (Continental) | \$376,522 |
| Industrial Valley Bank and Trust Company (IVB) | 196,865 |
| Bryn Mawr Trust Company (Bryn Mawr Trust) | 59,615 |
| Peoples National Bank and Trust Company, Norristown (Peoples Norristown) | 37,803 |
| Cheltenham National Bank (Cheltenham Natl.) | 34,203 |
| Union National Bank and Trust Company of Souderton (Union Natl.) | 29,357 |
| Security Trust Company of Pottstown (Security Trust) | 27,742 |
| Bank of Old York Road (Old York Road) | 26,941 |
| Harleysville National Bank and Trust Company (Harleysville) | 12,499 |
| Peoples National Bank of Souderton (Peoples Souderton) | 7,308 |
| Elkins Park National (Elkins Park) | 4,389 |

Banks in Adjacent Communities

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3. Number of Banking Offices*Montgomery County Banks**(principal offices and
branches)*

| | |
|--------------------|----|
| Continental | 13 |
| IVB | 8 |
| Bryn Mawr Trust | 2 |
| Peoples Norristown | 8 |
| Cheltenham Natl. | 6 |
| Union Natl. | 6 |
| Security Trust | 2 |
| Old York Road | 6 |
| Harleysville | 3 |
| Peoples Souderton | 1 |
| Elkins Park | 1 |
| King of Prussia | 1 |
| — | — |
| | 57 |

*Philadelphia Banks**(branches)*

| | |
|--------------------|----|
| First Pennsylvania | 5 |
| PNB | 12 |
| Girard | 9 |
| Fidelity | 6 |
| Provident | 5 |
| Central-Penn | 2 |
| | — |
| | 39 |

*Berks County Banks**(branches)*

| | |
|----------------------------|---|
| Natl. Bank of Boyertown | 1 |
|----------------------------|---|

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*Banks in Adjacent Communities***E. BUCKS COUNTY****1. Branching Areas**

| <i>Bucks County Banks Can Branch Into These Counties</i> | <i>Banks With Principal Offices In These Counties Can Branch Into Bucks County</i> |
|--|--|
| Bucks | Philadelphia |
| Philadelphia | Montgomery |
| Montgomery | Lehigh |
| Lehigh | Northampton |
| Northampton | |

2. Banks*Total Resources
(Thousands)*

| | |
|--|----------|
| Bucks County Bank and Trust Company (Bucks County) | \$32,770 |
| Doylestown National Bank & Trust Company (Doylestown Natl.) | 29,725 |
| Morrisville Bank (Morrisville) | 21,567 |
| Doylestown Trust Company (Doylestown Trust) | 21,479 |
| First National Bank and Trust Co., Newtown (First Natl.) | 13,394 |
| Quakertown National Bank (Quakertown) | 13,372 |
| Solebury National Bank, New Hope (Solebury) | 9,800 |
| Chalfont National Bank (Chalfont) | 6,393 |

3. Number of Banking Offices*Bucks County Banks
(principal offices and
branches)**Philadelphia Banks
(branches)*

| | |
|------------------|----------|
| Bucks County | 4 |
| Doylestown Natl. | 5 |
| Morrisville | 2 |
| Doylestown Trust | 1 |
| First Natl. | 2 |
| Quakertown | 4 |
| Solebury | 1 |
| Chalfont | 2 |
| | <hr/> 18 |

| | |
|--------------------|----------|
| First Pennsylvania | 2 |
| PNB | 6 |
| Girard | 1 |
| Fidelity | 6 |
| Provident | 2 |
| Central-Penn | 8 |
| Frankford Trust | 2 |
| | <hr/> 27 |

F. OUTLYING COUNTIES

1. *Chester County*

There are 13 banks in Chester County with aggregate total resources of \$214 million. These banks are permitted to branch into Delaware, Montgomery and Berks Counties.

2. *Berks County*

There are 16 banks in Berks County with aggregate total resources of \$618 million. These banks are permitted to branch into Montgomery, Chester and Lehigh Counties.

3. *Lehigh County*

There are 9 banks in Lehigh County with aggregate total resources of \$406 million. These banks are permitted to branch into Montgomery, Bucks, Northampton and Berks Counties.

4. *Northampton County*

There are 17 banks in Northampton County with aggregate total resources of \$461 million. These banks are permitted to branch into Bucks and Lehigh Counties.

G. ADJACENT COMMUNITIES

1. *Camden County, New Jersey*

There are 10 banks in Camden County with aggregate total resources of \$596 million.

2. *Trenton, New Jersey*

There are 4 banks in Trenton with aggregate total resources of \$485 million.

3. *Burlington County, New Jersey*

There are 14 banks in Burlington County with aggregate total resources of \$248 million.

4. *Wilmington, Delaware*

There are 5 banks in Wilmington with aggregate total resources of \$876 million.

OPINION AND ORDER OF DISTRICT COURT.**Dated October 13, 1966**

CLARY, Ch. J.

October 13, 1966

On December 6, 1965 the Central-Penn National Bank of Philadelphia and the Provident National Bank of Philadelphia applied to the office of the Comptroller of the Currency for permission to merge under the charter of the Central-Penn National Bank and with the title of Provident National Bank. The report by the Board of Governors of the Federal Reserve System to the Comptroller of the Currency under Section 18(c) of the Federal Deposit Insurance Act on the competitive factors involved in the proposed merger dated January 7, 1966, was that "the overall effect of the proposed merger on competition would be significantly adverse." On the same day, the Attorney General of the United States reported, "There are strong reasons, therefore, for believing that the proposed merger would have an important adverse effect on competition within the Philadelphia banking market . . . the anticompetitive effects of this merger are important and considerable and there are likely to be no redeeming features." The Federal Deposit Insurance Corporation filed no comment.

On March 4, 1966 the Comptroller of the Currency approved the merger, and on March 31, 1966, filed his written decision in respect thereof. In that decision the Comptroller noted that this application to merge was the first filed by banks of significant size to be acted upon by this office since the passage of the 1966 Amendment to the Bank Merger Act. He stated, "The new law, passed by Congress to moderate the decisions of the Supreme Court in *U.S. v. Philadelphia National Bank, et al.*, 374 U.S. 321 (1963) and *U.S. v. Lexington*, 376 U.S. 665 (1964) recognizes that traditional antitrust concepts cannot be applied to banking without substantial modification." His findings then followed sustaining the merger.

On April 1, 1966 the present action brought by the United States of America against Provident National Bank and Central-Penn National Bank of Philadelphia, defendants, was filed to enjoin the merger. On April 7, 1966 James J. Saxon, Comptroller of the Currency, intervened and thus is a party to the action, as provided by Section 1828(c) (7) (D) of Title 12 United States Code. Since under the provisions of the afore-quoted Section 1828 of Title 12 a novel situation has been brought about wherein two departments of the Executive Branch of the Government are litigating one against the other, with the approval of the Congress of the United States, it will be necessary to delineate in this Opinion to which branch of Government is being referred. Consequently, for the purposes of this Opinion, the plaintiff hereafter will be referred to as "Department of Justice" or "Justice"; the defendant Provident National Bank as "Provident"; the defendant Central-Penn National Bank of Philadelphia as "Central"; the joint defendants as "Banks"; the Comptroller of the Currency as "Comptroller" or "Intervenor," and the Bank Merger Act, Public Law 89-356, 64 Stat. 892, will be referred to as "BMA-66." The stated purpose of the aforesaid Act, as set forth in the slip sheet publication reads as follows:

"To establish a procedure for the review of proposed bank mergers so as to eliminate the necessity for the dissolution of merged banks, and for other purposes."

The pertinent pleadings to date which are essential to a decision on the present motions consist of a complaint filed by Justice, a joint answer filed by the Banks, the order permitting intervention of James J. Saxon, Comptroller of the Currency, answer of the Comptroller, motion of the Comptroller to dismiss, and motion of the Banks to dismiss. The basis for each of the motions to dismiss is that the complaint "fails to state a claim upon which relief can be granted."

There is no question that a law suit was started by Justice to enjoin the merger before the thirtieth calendar day after the date of approval by the agency (March 4, 1966). Thus, Justice has met the fundamental requirement of BMA-66, Title 12, Section (c) (7) (A), which prohibits any litigation challenging the merger after the thirtieth calendar day following approval. Justice has met the statutory limitation of action in that regard. A reading of the complaint leaves no doubt that Justice intended to plead, and did plead, a case of antitrust violation strictly in accordance with Section 7 of the Clayton Act (15 U.S.C., Section 18) and has attempted to ignore completely BMA-66. There are too many pointed references in the complaint challenging all alleged violations of antitrust law as contravening Section 7 of the Clayton Act only. Justice bottoms its case on the decision of the Supreme Court in *U.S. v. Philadelphia National Bank, et al.*, 374 U.S. 321 (1963). It is this specific pleading of Justice charging a violation of Section 7 which is relied upon by the Banks and the intervening Comptroller in their motions to dismiss. The Banks and Comptroller insist that a Section 7 action is no longer available to Justice in a merger or consolidation of the type involved in the instant case, and that any actions must be grounded in BMA-66 and no other statute in the light of the wording of BMA-66. The Banks and Comptroller urge that since Justice has failed to ground its action in a challenge under BMA-66 within the thirty day period, and that since such failure is substantive rather than procedural, the limitations contained in BMA-66 are applicable, that the Court is thus without jurisdiction, and the action must be dismissed. In plain language they insist that Justice has deliberately sought to avoid any requirements contained in BMA-66 which deletes "line of commerce" and adds another facet to the standards governing bank mergers, i. e. if anti-competitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served, the agency in question

is authorized to approve a proposed merger. This intransigence of Justice, they contend, is substantive, not procedural, and thus fatal to the position of Justice.

The weakness of the contentions of the Banks and of the Comptroller lies in the fact that we are now only at the notice pleading stage. The complaint specifically charges that the history of commercial banking in the four-county area of Philadelphia has been one of consolidations, mergers and acquisitions, with a heavy concentration of the business of commercial banking within a relatively few banks; that Provident controlled 9% of the total assets, 9% of the total loans, 9% of the total IPC deposits, 10% of the total IPC demand deposits, and 9% of the banking offices doing business in the four-county area; that Central-Penn, the sixth largest commercial bank in the four-county area, controlled 5% of the total assets, 5% of the total loans, 5% of the total IPC deposits, 5% of the total IPC demand deposits, and 6% of the banking offices doing business in the four-county area; that Provident is the product of seven mergers or consolidations since 1947, and Central-Penn is the product of six such mergers or consolidations since 1949; that the proposed merged bank would be the fourth largest bank in the area, controlling 14% of the total assets, 14% of the total loans, 14% of the total IPC deposits, 15% of the total IPC demand deposits, and 15% of the banking offices of 36 banks doing business in the four-county area. Also, Justice contends that after the proposed merger, the five largest banks in the area would control 78% of the total assets, 79% of the total loans, 76% of the total IPC deposits, 77% of the total IPC demand deposits, and 63% of the banking offices of 36 banks doing business in the area; that it would destroy competition between each other and other banks, and that it would substantially lessen competition or tend to create a monopoly. It also charges that competition generally in the commercial banks in the four-county area will be substantially and unreasonably lessened, and that concentration in commercial banking in

the four-county area will be substantially and unreasonably increased.

It cannot be gainsaid that if Justice had seen fit to plead generally and without reference to any particular statute, instead of specifically proceeding under Section 7 of the Clayton Act, and these factors pleaded might result in a violation of antitrust laws, the Court would of necessity have to hear the case. The only question for decision then is, does the reference solely to Section 7 invalidate the cause of action filed by Justice? For reasons hereafter set forth, this Court decides that it does not.

The purpose of notice pleading is merely to inform opposing parties what such opposing parties have to meet and defend. Justice charges a violation of antitrust laws, despite its insistence upon Section 7. Thus, suit is brought under antitrust laws of the United States.

The reference to a statute as being the basic ground upon which an action is brought, even if completely incorrect, is no ground for the dismissal of an action where there is a statute in existence which would warrant a valid cause of action for which relief could be granted upon the facts as pleaded. *Missouri K. & T. R. Co. v. Wulf*, 226 U. S. 570 (1913). This case involved a complaint based upon a state statute which had been repealed by the enactment of a federal statute not mentioned in the complaint. Mr. Justice Pitney, writing for the Court, held that the Court was presumed to be cognizant of the enactment and that the pleader was not required to refer to the federal act. He further stated that reference to the state statute no more vitiated the pleading than a reference to any other repealed statute would have done. It was only important that there were sufficient allegations to support an action under the new federal act.

The modern theory of notice pleading is one of even greater liberality, thus bolstering the decision reached in *Missouri K. & T. Co. v. Wulf*, supra. Today, the basic principle is that pleadings are no longer to be held to the rigid standards of the common law and neither absolute clarity

nor absolute precision is required. *United States v. Crown Zellerbach Corporation*, 141 F. Supp. 118 (N. D. Ill. 1956). It is enough to sustain a pleading against a motion to dismiss that a defendant is informed with reasonable particularity of a legally cognizable claim against him. If the plaintiff could recover on any state of facts, which it might prove in support of its allegations as laid, a motion to dismiss will be denied. *Conley v. Gibson*, 355 U. S. 41 (1957); *Melo-Sonics Corporation v. Cropp*, 342 F. 2d 856 (3 Cir. 1965); *Fuller v. Highway Truck Drivers & Helpers Local 107*, 233 F. Supp. 115 (E. D. Pa. 1964); *Miller v. Bargain City, U. S. A., Inc.*, 229 F. Supp. 33 (E. D. Pa. 1964).

Therefore, today the legal averments of a pleading are not so important as long as there are allegations which, if proved most favorably to plaintiff, would permit recovery under the laws of the United States. If, in such a complaint, there also appears a reference to an irrelevant statute, or if no statute is mentioned, the Court need only take judicial notice of the relevant statute. As stated in *Buell v. Sears, Roebuck & Co.*, 321 F. 2d 468 (10 Cir. 1963), it is not necessary to plead what may be judicially noticed. And, it is hornbook law that federal acts are a proper subject for judicial notice.

There is a further principle of pleading which has been recognized in federal procedure since *United States v. Morris*, 23 U. S. 246, 6 L. Ed. 314 (1825), that a subsequent pleading of an adversary, if not thereafter denied, may cure a defect in a prior pleading. *Cole v. Ralph*, 252 U. S. 286, 40 S. Ct. 321, 64 L. Ed. 567 (1920); *Albertson v. Federal Communications System*, 87 U. S. App. D. C. 39, 182 F. 2d 397 (1950); *Bullen v. DeBretteville*, 239 F. 2d 824 (1956). This principle applies to substantive as well as procedural omissions.

In the first defense of their answer, defendants claim that any action lies only under BMA-66. In their second defense, the defendant Banks put into controversy the question as to whether all right of Justice to enjoin the merger is vested in BMA-66. The answer of the Comptrol-

ler likewise puts into controversy the Bank Merger Act of 1966 by its prayer for relief.

We have long passed the stage peculiar to common law pleading that a failure in form of pleading vitiates the entire proceeding. This is an important case to all and is not a private quarrel between two branches of the Executive Department. The Congress of the United States has, for the first time, permitted two co-ordinate branches of the same department of Government to litigate opposite views in a judicial proceeding, thus affording one department of the Executive Branch, aggrieved by an alleged arbitrary position of the Department of Justice, to properly present for the first time before the judicial side of the Government its contention when it is in violent disagreement with the Department of Justice. While quite novel, in view of increasing differences between departments of Government, the provision is undoubtedly necessary.

In denying the motions to dismiss at this time, the Court does not sustain the position of Justice that it is entitled to sue under Section 7 of the Clayton Act. The only suit open to Justice to enjoin a bank merger lies solely within the ambit of BMA-66. It is not necessary at this time to decide the question of burden of proof, whether on Justice or on the Comptroller and Banks. That will be ruled upon in later pre-trial procedures.

ORDER

AND NOW, to wit, this 13th day of October, 1966, for the reasons set forth in the foregoing Opinion, it is **ORDERED, ADJUDGED AND DECREED** that defendants' Motion to Dismiss and intervenor's Motion to Dismiss be and they are hereby **DENIED**.

BY THE COURT:

Thomas J. Clary
Ch. J.

**OPINION AND ORDER OF THE DISTRICT COURT
ISSUED NOVEMBER 4, 1966.**

The first question to be resolved is how much weight is to be given to the findings of the Comptroller. In the recent case of *U. S. v. Crocker Anglo National Bank*, the Court, in answer to this question, declared its intention to apply the substantial evidence test to the Comptroller's public interest findings, calling the "convenience and needs" test of BMA-66, Section 5 (B) non-judicial in character. Yet, Crocker would also apply the substantial evidence test, with less vigor, to the Comptroller's findings on competition.

Crocker, however, is distinguishable from the case at bar, and it is distinguishable on one fact. In Crocker the findings of the Comptroller were based on a public, evidentiary hearing which produced 1605 pages of testimony and exhibits. There was no such hearing in the instant proceeding. Therefore, although the Crocker holding rules the instant case as a Court review of an agency decision, the question of scope of review comes under the rule of *First National Bank of Smithfield, North Carolina v. Saxon*, 352 F. 2d 267 (4 Cir. 1965).

Smithfield involved a branch bank approval under 12 U. S. C. Section 36 in which the Comptroller approved a new branch without a hearing. The Court first held that a hearing was not required because 12 U. S. C. Section 36 made no provision for one. A hearing is only required when expressly directed by the empowering statute. Then, after this determination, the Court declared that weight is only to be given to the Comptroller's decision if after a Court hearing in law and in fact it is found that his decision rested on an exercise of discretion. This is because the Court will not substitute its discretion for the Comptroller's.

This Court finds Smithfield to be analogous to the instant case. The BMA-66, like 12 U. S. C. Section 36, has no requirement for a hearing before the Comptroller, thus

allowing the Comptroller to act at his discretion. However, when there is no hearing, it cannot be contended that the findings of the Comptroller should be given the weight of hearing based findings.

The basis for this conclusion is best seen in the following quote from Smithfield:

"We have said the Comptroller did not act arbitrarily in not allowing a hearing. However, a necessary consequence of his unilateral procedure is that the facts on which the Comptroller presumably acted should not be given the preferred position accorded by the substantial-evidence rule. The rule would declare them indisputable if some reasonable basis for them may be found in the evidence. Applied here, the plaintiff would be bound by evidence offered in a proceeding in which it was not heard. Hence, there is no place in the review for an opening-presumption of correctness of any fact which it may appear to the Court was adopted by the Comptroller for his decision."

The substantial evidence rule, therefore, may be invoked only when a proper foundation is laid for it as was done in Crocker.

Therefore, the Court will hear all evidence in law and in fact, and if after it has made its findings, it then appears that the decision of the Comptroller is dependent on an exercise of discretion, the Court will bow to that discretion. However, if from the fact findings, it appears that the Comptroller abused, exceeded, or arbitrarily applied his discretion, the Court will set it aside.

The other question requiring answer is how is the burden of proof to be allocated? However, this Court's decision that Justice's only action lies within the ambit of BMA-66 allows only one solution. The allocation is as follows.

Justice must prove a violation of BMA-66, Section 5(B). To show this violation, Justice has to *prima facie*

establish (1) that there are anticompetitive effects, as defined in Section 5(B) and (2) that these anticompetitive effects are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. Only such a showing will make out a case for violation of BMA-66. Proof of anticompetitive effects solely is no longer controlling. A merger may be anticompetitive and yet be legal because it promotes the public interest as set forth in the Act. Therefore, for Justice to show illegality, it must prove first that a merger is not only anticompetitive, but also *prima facie* that it is not in the public interest.

If and when Justice establishes such a *prima facie* violation of BMA-66, the burden of producing evidence will shift to the Banks and the Comptroller to counter the Justice Department's proof. Once the Banks and Comptroller have presented their case, Justice will be given an opportunity to rebut such matters as are raised by the Banks and Comptroller in regard to the convenience and needs test. In any event, however, Justice has the overall burden of persuasion to show the illegality of the merger.

• • • •

**PLAINTIFF'S IDENTIFICATION OF WITNESSES,
SUMMARY OF EVIDENCE, AND
STATEMENT OF POSITION**

Plaintiff intends to sustain its burden of proving a prima facie case through two witnesses, Professor Donald R. Hodgman, Department of Economics, University of Illinois; and Professor Joel B. Dirlas, Department of Economics, University of Rhode Island. The expected testimony of these witnesses will be supported by relevant documentation introduced through the witnesses or approved for introduction into evidence by stipulation between the parties:

I

WITNESSES AND SUMMARY OF EXPECTED EVIDENCE

(1) *Professor Hodgman*

Professor Hodgman will be qualified as a national and international authority on monetary, fiscal and economic matters, with a background including the following:

University Professor in Economics; Seminar Instructor to banking personnel; Research Fellow on banks and finance by reason of grants from universities, the Bank of America, the National Science Foundation, The Merrill Foundation for Advancement of Financial Knowledge, Inc., and the Ford Foundation; Book Review Editor, Quarterly Review of Economics and Business, Bureau of Economic and Business Research, University of Illinois.

In 1963 Professor Hodgman became Associate Editor of the Journal of Finance, official journal of the American Finance Association. He is the author of numerous works on monetary and banking activity and policy, appearing in leading publications of the country. He is a member of the American Economic Association, The Econometric Society, and The American Finance Association.

Professor Hodgman has just recently returned from a year's leave of absence in Europe in connection with a comparative study of the instruments and processes of monetary policy in England, France, Germany and Holland.

The substance of Professor Hodgman's testimony, it is expected, will be essentially as follows:

Commercial banks offer their customers an extensive and functionally interconnected set of financial services which distinguishes them from all other financial institutions and necessarily circumscribes the geographical market within which commercial banks can effectively and profitably render such services.

Such services, keyed to commercial banks' unique position within the nation's system of payments, include the following: Commercial banks serve as depositories for checking and savings accounts, as sources of credit and loans of all kinds, as fiduciary agents for trusts and estates, registrarships, corporate trusteeships, pension fund trusteeships, and as advisors and counselors on securities and investments, financial statements, reconciliation of accounts, financial markets, trends in industry and tax matters. Commercial banks also participate indirectly, if not directly, in management problems of concerns by performing bookkeeping and cost accounting services, billing customers and administering payrolls. These services in combination operate to create complex "full service" customer relationships between commercial banks and their customers.

The services aspects of the business done by Provident and Central-Penn, aside from their other characteristics identifying them as commercial banks, earmark the banks as being engaged in a separate "line of commerce" within an area reasonably described as the four-county area of Philadelphia, Bucks, Delaware and Montgomery, State of Pennsylvania.

(2) Professor Dirlam

Professor Dirlam will be qualified as an authority on Government control of industry and public utility regulation which include industrial organization, with a background including the following:

University Professor in Economics; Consultant to the First Michigan Bank and Trust Company, to the Michigan Bankers Association, to the International Bank for Reconstruction and Development, to the Attorney General of Michigan, and to the Antitrust Division, United States Department of Justice, with respect to a variety of banking matters. He testified as an expert witness for the Antitrust Division, United States Department of Justice, in the Crocker-Anglo Bank case.

Professor Dirlam is the Review Editor for The Engineering Economist. He is the author of numerous works pertaining to industrial market structure, regulation and competition.

The substance of Professor Dirlam's testimony, it is expected, will be essentially as follows:

Concentration is high among commercial banks (hereinafter some times referred to simply as "banks") doing business in the four-county area of Philadelphia, Bucks, Delaware, and Montgomery Counties, Pennsylvania. This concentration rests to a large degree on a merger trend that has existed in the four-county area since December 31, 1945. Between December 31, 1945 and December 31, 1960, 72 banks disappeared through merger or acquisition in the four-county area, with only two new banks entering upon the scene during the period. These 72 banks held assets of \$1,841,500,000, deposits of \$1,659,200,000, and loans of \$615,800,000. In the five-year period following, December 31, 1960 to December 31, 1965, ten more banks disappeared through the same route, with only two new banks coming into existence. These ten banks held assets of \$281,200,000, deposits of \$250,500,000,

and loans of \$132,100,000. The following table illustrates in different perspective the impact of this concentration trend:

| <i>Commercial Banks doing Business in the Four-County Area</i> | 1945 | 1960 | 1965 |
|--|-----------------|-----------------|-----------------|
| Number of Banks | 115 | 45 | 37 |
| Number of Banking Offices | 176 | 280 | 379 |
| Total Assets | \$4,484,400,000 | \$6,027,600,000 | \$8,136,200,000 |
| Total Deposits | \$4,108,400,000 | \$5,306,100,000 | \$7,085,300,000 |
| Total Loans | \$ 632,600,000 | \$2,926,400,000 | \$4,657,000,000 |

Since the filing of this case on April 1, 1966, still two more banks have gone out of existence by way of merger, with assets in the aggregate of \$35,225,000, deposits of \$31,166,000, and loans of \$17,106,000.

Concentration has been particularly noticeable in the five largest banks doing business in the four-county area, as testified to by the following table:

| <i>5 Largest Commercial Banks in Four-County Area</i> | 1945 | 1960 | 1965 |
|---|-------|-------|-------|
| Percentage of Banking Offices of all Banks doing Business in the Four-County Area | 15.3% | 52.5% | 57% |
| Percentage of Total Assets of all Banks doing Business in the Four-County Area | 51% | 71.6% | 73.1% |
| Percentage of Total Deposits of all Banks doing Business in the Four-County Area | 51.8% | 71.7% | 73.1% |
| Percentage of Total Loans of all Banks doing Business in the Four-County Area | 53.9% | 72.3% | 73.9% |

The growth history of the present five largest banks has been to a significant degree, one of absorption and acquisition

of other banks. In the 20-year span, December 31, 1945 to December 31, 1965, these banks have acquired banks with assets totaling \$1,725,500,000 (or 45% of the present five largest banks' growth in assets over the period), deposits totaling \$1,556,000,000 (or 45% of the present five largest banks' growth in deposits over the period), loans totaling \$604,600,000 (or 19.2% of the five largest banks' growth in assets over the period), and 118 banking offices (or 60.2% of the present five largest banks' growth in banking offices over the period):

Both Provident and Central-Penn have contributed substantially to the merger trend within the four-county area. Since 1947 Provident has acquired seven banks in the four-county area with assets in the aggregate of \$411,943,000, deposits of \$358,288,000, loans of \$185,099,000, and 21 offices. The assets, deposits, and loans of these seven acquired banks equaled 57%, 57%, and 45% of Provident's assets, deposits, and loans as of December 31, 1965. Since 1949 Central-Penn has acquired six banks in the four-county area with assets in the aggregate of \$89,994,000, deposits of \$83,878,000, loans of \$27,629,000, and 14 offices. The assets, deposits, and loans of these six acquired banks equaled 24%, 25%, and 13% of Central-Penn's assets, deposits, and loans, as of December 31, 1965. Both Provident and Central-Penn have attempted unsuccessfully to acquire several other banks in the four-county area during this period.

As of December 31, 1965, Provident, the 5th largest commercial bank in the four-county area, controlled approximately \$723,300,000 (9%) of the total assets, \$627,100,000 (9%) of the total deposits, \$412,100,000 (9%) of the total loans, and 32 (8%) of the banking offices of the 37 banks doing business in the four-county area.

As of December 31, 1965, Central-Penn, the 6th largest commercial bank in the four-county area, controlled approximately \$377,500,000 (5%) of the total assets, \$333,000,000 (5%) of the total deposits, \$218,300,000 (5%) of the total loans, and 24 (6%) of the banking offices of the 37 banks doing business in the four-county area.

The proposed merger would produce a bank controlling an undue percentage share of the relevant market (four-county area) and result in a significant increase of concentration of commercial banks in the area. After the proposed merger the resulting bank would become the 4th largest in the area. It would control approximately 14% of the total assets, 15% of the total deposits, 14% of the total loans, and 15% of the banking offices of the 36 remaining banks doing business in the four-county area. After the merger, the five largest banks in the area would control 77.7% of the assets, 77.8% of the deposits, 78.6% of the loans, and 63.3% of the offices held by the 36 remaining banks operating in the area.

The four-county area of Philadelphia, Bucks, Delaware and Montgomery Counties, Pennsylvania, is the relevant market in which to assess the effects of the merger. The majority of the banks' customers and the dollar amount of the banks' business originate within the four-county area.

Of their total number of depositors, at least 95% for Provident and 98% for Central-Penn are located in the four-county area.

Of their total number of depositors, at least 95% for Provident and 98% for Central-Penn are located in the four-county area. Of their total number of borrowers, at least 97% for both Provident and Central-Penn are located in the four-county area. In terms of dollar amounts, 82% of Provident's and 88% of Central-Penn's deposits, and 58% of Provident's and 83% of Central-Penn's total loans originate in the four-county area.

As Provident and Central-Penn are competing with each other in the four-county area, the proposed merger would eliminate all competition, existing and potential, between them.

II

STATEMENT OF POSITION

On November 4, 1966, the Court ruled on the issue of the weight, if any, to be given by the Court to the decision of the

Comptroller approving the proposed merger of Provident and Central-Penn, and on the issue of plaintiff's burden of proof. The Court ruled as follows:

"..... the Court will hear all evidence in law and in fact, and if after it has made its findings, it then appears that the decision of the Comptroller is dependent on an exercise of discretion, the Court will bow to that discretion. However, if from the fact findings, it appears that the Comptroller abused, exceeded, or arbitrarily applied his discretion, the Court will set it aside.

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"Justice must prove a violation of BMA-66, Section 5(B). To show this violation, Justice has to *prima facie* establish (1) that there are anticompetitive effects, as defined in Section 5(B) and (2) that these anticompetitive effects are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. Only such a showing will make out a case for violation of BMA-66. Proof of anticompetitive effects solely is no longer controlling. A merger may be anticompetitive and yet be legal because it promotes the public interest as set forth in the Act. Therefore, for Justice to show illegality, it must prove first that a merger is not only anticompetitive, but also *prima facie* that it is not in the public interest.

"If and when Justice establishes such a *prima facie* violation of BMA-66, the burden of producing evidence will shift to the Banks and the Comptroller to counter the Justice Department's proof. Once the Banks and Comptroller have presented their case, Justice will be given an opportunity to rebut such matters as are raised by the Banks and Comptroller in regard to the convenience and needs test. In any event, however, Justice has the overall burden of persuasion to show the illegality of the merger."

This statement of plaintiff's position is not an attempt to reargue these issues, upon which the Court has ruled; its purpose is to explain, briefly, some of the reasons for the absence of any reference, in the foregoing summary of expected evidence, to "convenience and needs of the community," and any corollary effect this might have on the weight to be given to the Comptroller's decision.

Plaintiff respectfully submits, as it has throughout these proceedings, that the offense charged is one under Section 7 of the Clayton Act, and, therefore, that the case should be tried and an adjudication should be made on the basis of whether or not there is a violation of Section 7.

In phrasing the ultimate issue in this way, plaintiff does not mean to suggest that the Bank Merger Act of 1966 has no relevance to this lawsuit. Plaintiff recognizes that the Bank Merger Act of 1966 establishes standards to be applied by the banking agencies in approving or disapproving proposed mergers, and that these same standards are to be applied by the courts in passing on the legality of bank mergers under Section 7 of the Clayton Act. Section 7, however, has not been displaced by the 1966 Act; rather Section 7 is to be applied by the Courts in light of the standards of the 1966 Act.

There is no suggestion in the 1966 Act that approval of a bank merger by a regulatory agency is to be accorded any presumption of regularity, or any special weight. The 1966 Act does not provide a statutory scheme for judicial review of agency action; hence, it should not be plaintiff's burden in this case to establish that the Comptroller acted arbitrarily, or that he abused his discretion.

It is true that the statutory scheme thus requires the Court to determine *de novo* all of the issues raised by Section 7 and by the Bank Merger Act of 1966, including the question of whether the anticompetitive effects of the merger are clearly outweighed by its probable effect in meeting the convenience and needs of the community. But we do not believe that the latter issue imposes on the Court a uniquely

difficult task. We submit that the plain purpose and the legislative history of the Act indicate what Congress intended as the weighing process required by the 1966 Act. We now consider that purpose and history.

In 1963 the decision of the Supreme Court in the *Philadelphia National Bank* case resolved preexisting doubts as to the application of the antitrust laws to bank mergers. In affirming that the antitrust laws did apply, however, it uncovered two major problem areas. The first had to do with the extent to which the courts should take into consideration the peculiar importance of safeguarding bank solvency and viability which is the primary concern of the bank supervisory agencies.¹ Second involved the question whether the courts and the banking agencies would apply the same standards in reviewing bank mergers. (This problem was a very real one in light of the record of the banking agencies in approving over 90% of the merger applications presented to them under the 1960 Act.)

The purpose of the 1966 amendment was to provide answers to these questions. This amendment makes clear that the banking agencies, in reviewing mergers under the Act, and the courts, in actions under the antitrust laws, are to apply the same standards. In evaluating the competitive effects of a proposed merger antitrust standards are to be applied, but the agencies and the courts are directed also to "take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served." The amendment also makes clear, however, that the probable competitive effect of a merger is to be given the greatest weight, since it provides that a merger which may substantially lessen competition may be justified only

1. Although the Court's opinion strongly implied that it would consider such "banking factors" and expressly stated that "the so-called failing company defense . . . might have somewhat larger contours if applied to bank mergers because of the greater public impact of a bank failure compared with ordinary business failures" it also pointed out that these issues were not raised in the case then before it.

where such anticompetitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community. As the House Report on the Bill pointed out, this is a standard stricter than that applied by the banking agencies under the original Bank Merger Act.

In our view, the considerations likely to meet this heavy burden are principally those relating to the public interest in bank solvency and viability. This stress on the unique importance of solvency and viability is supported by two major arguments.

In the first place, these are the only factors specifically mentioned in the statute itself, i.e., "the financial and managerial resources and future prospects of the existing and proposed institutions." And, considerations relating to solvency and viability were the factors emphasized in the legislative history of the Act when Congress discussed the meaning of convenience and needs of the community.

Secondly, it is this public interest in bank solvency and viability which peculiarly distinguishes banking from other segments of the economy.² It is that interest which is the basic rationale for bank regulation. By the same token, factors which have no relationship with this concern for bank solvency and viability do not warrant greater weight in determining the legality of bank mergers than they would receive in merger cases in other industries.

The task of weighing the anticompetitive effects of a bank merger against its possible effect in meeting this "public concern to safeguard the viability of the banking system"

2. As the Comptroller of the Currency pointed out in his 102d Annual Report, "Underlying this intercession of government in banking is a basic public policy that sets this industry clearly apart from others. The factor which distinguishes banking from other industries is the public concern to safeguard the viability of the banking system." And more recently, "There is but one consideration of the public interest which can be made the basis for restrictions over banking activities—that is the necessity to maintain the solvency and liquidity of banks." (Remarks of James J. Saxon, Comptroller of the Currency, before the National Bank Division, American Bankers Association, October 24, 1966.)

is similar, though admittedly not identical, to the task the courts have always performed in applying the so-called "failing company doctrine" in Section 7 cases. And, as the courts have consistently held in such cases, it is the defendants who have the burden of coming forward with evidence on this issue. For it is plainly the defendants, and not the Government, who are in the best position to know whether the merger meets problems of bank solvency and viability, whether in the particular case such problems are substantial, and whether the merger is essential to their solution. By the same token, whatever other factors might appropriately be regarded as "convenience and needs," it is clear that the banks proposing to merge would be in a peculiarly superior position to advance them as warranting the merger. Hence, the statute undoubtedly intended the merging parties to have the burden of coming forth with this evidence.

Moreover, we note that even if the Bank Merger Act of 1966 required plaintiff to show that the Comptroller had abused, exceeded, or arbitrarily applied his discretion in finding that the anticompetitive effects of the merger were outweighed by its probable effect in meeting the convenience and needs of the community, the decision of the Comptroller in the present case contains no findings or conclusions on this issue. The Comptroller's opinion (pp. 17-18) mentions only three ways in which the merger will affect "the convenience and needs of the Philadelphia market:" the increased lending capacity of the resulting bank which it is said will benefit large banking customers through the creation of an additional source of very large loans; the combining of the computer systems of the applicant banks to yield a more efficient data processing operation; and the use of the recently renovated Provident main office by the resulting bank which it is said will increase its efficiency, improve customer service and eliminate the necessity of a substantial outlay by Central-Penn to obtain adequate headquarters. None of these factors appears to be related to the questions of bank solvency and viability which, as we have shown above, were the primary

concern of Congress in amending the Bank Merger Act. Moreover, the Comptroller's opinion nowhere discusses the substantiality of these alleged benefits of the merger, whether they could be attained by other methods, or, since he finds no adverse effect on competition, the ultimate question of whether they would clearly outweigh the merger's anticompetitive effects. Thus, even under the defendants' reading of the statutory scheme, the Comptroller's decision presents no issue of weighing anticompetitive effects against convenience and needs of the community as to which plaintiff should be required to come forward with evidence.

For the foregoing reasons plaintiff does not intend, in establishing a prima facie case, to offer proof either of the existence or the significance of "convenience and needs" factors, if any there may be. Plaintiff reserves the right, however, to offer in rebuttal evidence with respect to any such factors, should it become necessary to do so.

Respectfully submitted,

JULIUS JAY HOLLIS

JOSEPH L. DWYER

Attorneys, Department of Justice

Dated: November 26, 1966

**DEFENDANT BANKS' MOTION
FOR FINAL JUDGMENT.**

The defendant Banks move the Court for a final judgment in their favor such as would be entered at the close of the plaintiff's evidence if the plaintiff failed to make out a prima facie case. The Banks are making this motion at this time instead of awaiting the close of the plaintiff's case at trial because the plaintiff, in its statement of position filed November 28, 1966, has unequivocally stated that it does not intend to establish a prima facie case under the Bank Merger Act of 1966 and this Court's ruling of November 4, 1966, in that it will not offer proof either of the existence or significance of convenience and needs factors. Postponement of the Court's decision until trial will not alter the issues or the positions of the parties and will cause unnecessary delay in final ruling on the defendant Banks' merger, which has already been postponed eight months.

The judgment which the Banks are seeking by this motion is the same as would be entered upon a motion for dismissal after completion of the plaintiff's case, and would therefore operate as an adjudication on the merits under Rule 41(b). The Banks are asking the Court to enter judgment now instead of reserving its decision until all parties have put in their evidence because this is the only way to obtain a clear cut test of the position taken by the Department of Justice; namely, that "it should not be plaintiff's burden in this case to establish that the Comptroller acted arbitrarily, or that he abused his discretion."

The plaintiff's contention, set forth in its statement of November 28, is that the Department of Justice can block a bank merger approved by the Comptroller without offering evidence as to the convenience and needs of the community and "any corollary effect this might have on the weight to be given to the Comptroller's decision." The Department has refused to allege or to prove that the merger is not in the public interest. It has sought to force upon the Banks

the burden of proving a second time to the Court what they have already proved once to the Comptroller, i.e., that the merger meets the convenience and needs of the community to be served.

On November 4 this Court ruled against the Department as to the burden of persuasion, and also as to the burden of producing evidence. The Department's statement of November 28 shows that it is willing to put its case at stake in order to obtain review of that ruling. If this Court were to reserve its decision on the instant motion, the effect would be partially to reverse the Court's order of November 4 by forcing the Banks to come forward with evidence which on November 4 this Court said the Department of Justice was required to produce.

The grounds for this motion are:

1. On December 6, 1965 the Banks filed with the Comptroller of the Currency their application for approval of their proposed merger. The application was filed pursuant to Section 18(c) of the Federal Deposit Insurance Act as amended by the Bank Merger Act of 1960. Exhibit A to this motion is a copy of the application, verified by affidavits of the Banks.

2. On January 7, 1966 the Board of Governors of the Federal Reserve System and the Department of Justice filed with the Comptroller their reports on the competitive factors involved in the merger as required by Section 18(c) of the Federal Deposit Insurance Act. Exhibits B and C to this motion are, respectively, copies of the Federal Reserve report and the Department of Justice report.

3. On February 21, 1966 the Bank Merger Act of 1966 became effective. Among other things, it completely rewrote Section 18(c) of the Federal Deposit Insurance Act. It established new standards to be applied by the Comptroller in passing upon the merger application and provided that in any judicial proceeding attacking the merger the standards applied by the court shall be identical

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with those that the Comptroller was directed to apply. These standards are contained in clause (5) of Section 18(c), which reads as follows:

“(5) The responsible agency shall not approve—

“(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

“(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.”

“In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.”

4. After the issuance of the advisory reports and the enactment of the Bank Merger Act of 1966, the Banks supplied to the Comptroller supplementary material relating to the comments in the Federal Reserve report and the newly enacted statute, verified copies of such material being contained in Exhibit D to this motion.

5. On March 31, 1966 the Comptroller issued his decision approving the Banks' application to merge. He found that the proposed merger “clearly conforms to the statutory criteria,” i.e., the standards prescribed by the Bank

Merger Act of 1966. Exhibit E to this motion is a copy of the Comptroller's decision.

6. On April 1, 1966 the Department of Justice filed its complaint against the defendant Banks, seeking an injunction under the Clayton Act. The complaint made no reference to the Bank Merger Act of 1966. Thereafter, the Comptroller intervened to defend his decision as provided by the Bank Merger Act of 1966.

7. On June 7, 1966 the Court entered Pre-Trial Order No. 1, directing the parties to file detailed written briefs setting forth the facts which they expected to prove in support and defense of each claim for relief and the legal issues, contentions and supporting authorities relating thereto, including their contentions as to burden of proof. The order also directed the plaintiff to file a detailed written reply brief setting forth the facts, if any, which plaintiff expected to prove in rebutting any affirmative matter raised in defendants' brief. Exhibits F, G and H to this motion are, respectively, copies of pretrial briefs of the plaintiff and the defendants and the reply brief of the plaintiff.

8. The plaintiff's pretrial brief took the position that the Banks had the burden of proving that any anticompetitive effects of the merger are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served. The defendants' pretrial brief took the position that the plaintiff had the burden of showing wherein the Comptroller acted arbitrarily or capriciously or exceeded the bounds of his discretion in striking a balance between competition and public interest. The defendants' brief also set forth at length the facts which the Banks expect to prove in support of their claim that their merger is in the public interest. The plaintiff's reply brief did not set forth any rebuttal to these facts. It stated that plaintiff "is not in a position to inform

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this Court. whether plaintiff believes the conclusions reached [in paragraphs 3.9 through 3.21 of the Banks' brief] are correct or not" (paragraph 21 of plaintiff's reply brief).

9. On November 4, 1966 the Court made the following ruling:

"Therefore, the Court will hear all evidence in law and in fact, and if after it has made its findings, it then appears that the decision of the Comptroller is dependent on an exercise of discretion, the Court will bow to that discretion. However, if from the fact findings, it appears that the Comptroller abused, exceeded, or arbitrarily applied his discretion, the Court will set it aside.

"The other question requiring answer is how is the burden of proof to be allocated? However, this Court's decision that Justice's only action lies within the ambit of BMA-66 allows only one solution. The allocation is as follows.

"Justice must prove a violation of BMA-66, Section 5(B). To show this violation, Justice has to prima facie establish (1) that there are anticompetitive effects, as defined in Section 5(B) and (2) that these anticompetitive effects are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. Only such a showing will make out a case for violation of BMA-66. Proof of anticompetitive effects solely is no longer controlling. A merger may be anticompetitive and yet be legal because it promotes the public interest as set forth in the Act. Therefore, for Justice to show illegality, it must prove first that a merger is not only anticompetitive, but also prima facie that it is not in the public interest.

"If and when Justice establishes such a prima facie violation of BMA-66, the burden of producing

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evidence will shift to the Banks and the Comptroller to counter the Justice Department's proof. Once the Banks and the Comptroller have presented their case, Justice will be given an opportunity to rebut such matters as are raised by the Banks and Comptroller in regard to the convenience and needs test. In any event, however, Justice has the overall burden of persuasion to show the illegality of the merger."

10. On November 28, 1966 the plaintiff filed its "Identification of Witnesses, Summary of Evidence, and Statement of Position," stating (a) that "it should not be plaintiff's burden in this case to establish that the Comptroller acted arbitrarily, or that he abused his discretion" and (b) that "plaintiff does not intend, in establishing a prima facie case, to offer proof either of the existence or the significance of 'convenience and needs' factors, if any there may be." Exhibit I to this motion is a copy of said document.

11. The questions posed by this motion are purely legal in nature. They depend upon the meaning of the Bank Merger Act of 1966 in the light of the Constitutional separation of powers. They do not depend upon the resolution of any disputed issue of fact. Against the background of the facts which the Banks set forth in their merger application and offered to prove in their pretrial brief, the Department of Justice has deliberately staked its case on its interpretation of the statute. Wherefore, the defendant Banks submit that a final judgment should now be entered in their favor.

Frederic L. Ballard
Attorney for Defendants

Dated: December 2, 1966

**DEFENDANT BANKS' LIST OF PROSPECTIVE
WITNESSES WITH SUMMARIES OF
THEIR TESTIMONY.**

INTRODUCTORY STATEMENT

On October 26, the Court fixed a schedule (later extended) for the filing by the parties of lists of witnesses and short outlines of their testimony. On November 4, the Court entered an order with respect to the burden of proof. On November 28, the plaintiff filed its outline of testimony, together with a statement that it did not intend to undertake the burden of proof assigned to it in the Court's order. On December 2, the defendant Banks filed their motion for final judgment by reason of the plaintiff's announced failure to establish a prima facie case. This outline of testimony is being filed while the motion for judgment is under consideration by the Court.

In preparing this outline, the Banks have been hampered by the fact that the plaintiff has consistently failed to identify the issues in the case. Plaintiff did not take issue with the Comptroller's findings as to the beneficial effects of the merger on competition with larger banks and in meeting the convenience and needs of the community. Nor did the plaintiff take issue with any facts stated in the application and supplementary information submitted by the Banks to the Comptroller. Nor has the plaintiff rebutted the Banks' statements in their prerial brief as to the facts they expect to prove in support of their case.

As a consequence of plaintiff's position, no issues have been framed except as to the validity of the plaintiff's statistics on market shares and concentration and the conclusions to be drawn therefrom. The following outline sets forth the testimony which the Banks will introduce with respect to those statistical issues. Additionally, it covers the testimony which the Banks were prepared to offer in support of the Comptroller's findings if plaintiff had

elected to challenge those findings. In submitting this additional outline, however, the Banks are not withdrawing from the position taken in their motion of December 2. They reiterate their request for an immediate final judgment which will operate as an adjudication on the merits.

The Banks also reiterate the position taken in conference with the Court; namely, that if the Court were to deny the Banks' motion for judgment or reserve decision until after a full trial, and if the case were then to be tried on the basis of the plaintiff's interpretation of the Bank Merger Act of 1966, the Banks should be given wide latitude in introducing evidence to assist the Court in deciding whether the merger is in the public interest. Such evidence would follow in general the outline set forth below, but would of necessity include additional textual material and testimony directed at the broad questions of policy involved in bank mergers.

Moreover, the Banks submit that if the Court is considering denial of the motion for judgment or reservation of its decision thereon, it would be appropriate to require the plaintiff to file promptly an outline of the testimony plaintiff would offer in rebuttal to the positions taken by the Banks in their application to the Comptroller, their pretrial brief and this outline. Plaintiff should not be permitted to disregard the Court's wish that the issues be framed in advance of trial.

For the foregoing reasons, and because the Banks do not know what testimony the Comptroller is proposing to introduce, the Banks respectfully reserve the right to enlarge the testimony of the witnesses listed below and to call additional witnesses if the Court decides that the case should be tried at this time.

Appended hereto is a table of the Banks' witnesses, followed by outlines of their experience and testimony.

Frederic L. Ballard
Attorney for Defendants

Dated: December 14, 1966

**OUTLINES OF WITNESSES' EXPERIENCE
AND TESTIMONY.****A. BANK PERSONNEL**

James M. Large—Chairman of the Board, Provident National Bank

Experience

Joined Tradesmens National in 1928. Advanced through several positions to President in 1947. Remained President through successive mergers until merger with Provident in 1957, when he became Chairman of the Board.

Testimony

Full service banking includes (a) services for individuals—specialized deposit accounts, consumer loans, single payment loans, trust services, foreign services, electronic data processing ("EDP") services, mortgages—all available at convenient branches; (b) services for businesses—deposit accounts, ARP, lock box and other accounting and EDP services, unsecured loans (both short and long term), mortgages, corporate trust, pension and profit sharing, financial counseling; (c) accounting, EDP and other services for financial institutions (in addition to loans and deposits); (d) a full line of services for other banks; (e) services for municipal units comparable to those performed for business customers.

Full service banking has developed in Philadelphia largely through mergers, combining the skills and specialties of constituent banks. Provident is an example: consumer credit department combines elements from Tradesmens, Land Title, and Provident Trust; construction loan, largely from Land Title; international and foreign banking, from Tradesmens; trust services from Provident Trust; commercial lending, largely from Tradesmens; retail branch system, partly from smaller banks.

Bank mergers in Philadelphia have produced better service and more competition, as shown by history since 1928, when PNB was by far the largest. Traditionally, national banks and state trust companies specialized in different fields. National banks' historic function was clearing and collection of checks and making unsecured short-term self-liquidating loans to finance commercial transactions. Trust companies made very few unsecured loans. Thus the two groups were complementary rather than competitive. Mergers between them have created modern institutions (First Pennsylvania, Girard, Fidelity, Provident) which compete with PNB. It is significant that all four are built around a former trust company. A large trust department contributes to income, attracts new business and retains old business.

Competition from country banks is also an important factor. Large units created by recent mergers have advantages in branching areas and reserve requirements. They are aggressive and successful.

Development of retail branch banking is also important. Began in 1950's as banks in city followed customers to suburbs. Suburban customers include not only individuals, but also light industry and research laboratories (industrial parks), school districts, municipal authorities, and other municipal and educational units. First Pennsylvania (then Pennsylvania Company) was an early leader. Provident and Tradesmens did not move as fast.

Present status of Philadelphia banks: First Pennsylvania, PNB, Girard are leaders in various fields. Some fields dominated by New York banks. Merged bank will not be the largest in any field.

In comparison with other cities, Philadelphia area has numerous small banks and a lack of large banks. Many smaller cities have larger banks. No other city has as many evenly matched banks at the top. This will be even more true after the merger.

Competition with banks from other cities is intense. New York, Pittsburgh and other banks solicit in Philadel-

phia. Provident solicits in other cities. Competition is largely in providing services. In many fields, larger banks give more specialized service because they can afford expert personnel. This is particularly true of New York banks.

The Provident—Central-Penn merger will permit more specialization, will improve service and enhance competition. It has received support from Pennsylvania legislators, Philadelphia City officials, and Philadelphia newspapers.

William G. Foulke—President, Provident National Bank

Experience

Investment banking (E. B. Smith & Co.) before 1938. Then joined Brown Brothers. In 1940 joined Provident Trust in banking department. Moved to trust department in 1945, special business investment unit in 1950, in charge of Trust Division 1957, Executive Vice President 1960, and President in 1962.

Testimony

Provident Life and Trust founded in 1865. The trust business was separately incorporated in 1922. The bank undertook development of commercial business after World War II, development of retail branches by merger and de novo in mid 1950's.

Branch development was delayed by merger with Trademens. A 1962 survey by First Research Corporation showed need for many more branches. Despite subsequent addition of six branches through Second National merger and eight de novo, system still has substantial gaps.

Branch system is necessary to retain and attract the business of individuals who want to bank at locations convenient to home or place of business. This has brought commercial banks into competition with mutuals and savings and loans. Branches are also necessary to attract and retain local businesses, schools, governmental units and

other institutions. Complete branch coverage is needed to get full benefit from regional advertising, to retain customers who move within four-county area, and to serve those who have outlets throughout the area.

Philadelphia banks are severely restricted in branching by the four-county limitation. Natural tendency would be for them to branch into other parts of Delaware Valley. Branching limitations do not reflect economic or banking market. They protect country banks from city competition. They do not restrict large Montgomery County banks to same degree.

De novo branching is costly and there is a scarcity of suitable locations. This is why country banks command premium in merging with city banks. Merger with Central-Penn involves no premium, no duplication of branches.

Commercial banks are important source of trust services, compete with lawyers and individual trustees. The merger will improve the quality of trust services available through Central-Penn branches. Provident has unusual experience in handling small trust accounts such as those that typically are generated in branches. It provides more specialized services in this field, an example being its investment services, which include six common trust funds, estate planning, tax and administrative services. Provident also has a separate department for the administration of substantial interests in close corporations and family businesses held in trusts of which it is trustee.

Provident's experience following the mergers with First National Bank of Delaware County and Second National Bank of Philadelphia shows that there is great need for increased trust services through branch offices. Many individuals who should have these services are not even aware of their existence. A competent staff is essential for proper trust administration, and there is an acute shortage of qualified trust personnel. The merged bank would be better able to attract and retain such personnel and thus to meet this need.

Merger will also improve quality of service and competitive effectiveness in correspondent banking. First Pennsylvania and PNB are Philadelphia leaders in this field; their correspondent balances are five times those of Provident, ten times those of Central-Penn.

City banks perform many services for their country correspondents in addition to the traditional clearing and collection. These include the investment portfolio administration, loan participations and advice, trust advice and international services. A recent innovation is EDP services, for which Provident has three customers, Central-Penn one, and larger banks many more. Provident also offers a unique cost control program, which is used by about 35 banks. Services offered by larger banks but not by Provident or Central-Penn include U. S. Treasury and municipal bond trading and underwriting, the making of an active market in Federal funds, and availability to correspondents of pension and insurance programs. The merged institution, with larger correspondent balances, would be in a better position to provide these services. It could also expand its portfolio analysis for correspondent banks. The combination of Provident and Central-Penn EDP equipment and programs would improve services to customers of both banks.

The improvement and broadening of services to correspondents will affect the quality of banking services and banking competition in communities throughout the whole area in which the banks now have correspondents; i.e., Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia and Virginia.

In the correspondent field, larger banks have many advantages: more sending points, more resources for large transactions, more extensive foreign services. Also, their greater volume of transactions permits more specialization. There is remarkably little overlap between correspondent business of Provident and Central-Penn. Merger will be substantial step toward catching up with First Pennsylvania and PNB.

Merger will also improve services in other fields, to be discussed by other witnesses: retail services (Randolph); EDP services (Carr); business and construction loans (Hillas); consumer loans (Still); foreign banking (Weber).

On broader scale, merged bank will do more for community, will provide more institutional programs like "Provident Forums" (discussions of important national and international issues by leading speakers), will have more personnel available for charitable and civic enterprises, can play bigger part in municipal finance and financing of cultural, educational and civic projects. A billion dollar bank can underwrite projects which lesser institutions could not even consider. This is important to economy of Philadelphia and the Delaware Valley.

Banking is not static. There has been gradual expansion in branching authority for Pennsylvania banks. A commission is studying further expansion. Also, there have been movements to enlarge functions of mutuals to include consumer loans and other banking functions, with proposed legislation in Congress to permit conversions of savings institutions. All these point to large and more versatile institutions and more vigorous competition.

Banking is on brink of new and revolutionary developments such as the checkless society, automated transfer of funds locally, nationally and internationally. Merged bank will be able to play a bigger part in these developments.

Philadelphia's central position in eastern "megapolis," with increasing speed and ease of communication, transportation and redevelopment of the Port and the City, holds great promise of growth and will increase competition in all businesses, including banking. Increasing costs of new equipment, such as jet planes and helicopters, equipment for the space age, and atomic energy installations will require larger and more complex financing. These developments will break down barriers between financial centers in this country and abroad. Banks which are to compete in these new markets will have to have resources at least as big as the merged institution.

William B. Carr—Executive Vice President, Provident National Bank

Experience

Various capacities with General Electric, 1945-51. Joined Provident Trust in 1951 as Comptroller. Moved to Vice President and Comptroller, then Senior Vice President, Operations Division. Became Executive Vice President in 1964.

Testimony

Mr. Carr is in charge of operations—meaning the running of the bank's internal business—the largest department of the bank. Operations includes check handling, accounting, bookkeeping, audit, trust operations (at Provident, not at all other banks). Also, accounting and financial services to bank's customers.

Operations have been greatly affected by improvements in systems and equipment in last 10 years which have accelerated transfers of funds, enabled banks to handle more transactions faster with fewer employees, pay better salaries, provide better services and maintain or reduce charges.

Also, machines have made business of small customer more profitable, an example being trust operations. Bank which can afford to automate these operations can profitably handle small trusts.

Provident and Central-Penn both offer quite wide variety of customer services, each offering some which the other does not offer. Thus, present customers of each bank will have wider choice after the merger.

Competition in this field is not limited to Philadelphia banks. Includes other Pennsylvania and out-of-state banks, service bureaus, and suppliers selling or renting equipment to the banks' customers.

Operations are increasingly dependent on computers, which are costly to acquire and to operate, must be operated near capacity to pay for themselves. Also the develop-

ment of programs for computers is expensive and time-consuming. Larger banks can afford to devote specialists to this work on a full-time basis.

Provident has computerized—or is now computerizing—all major operations. Central-Penn is not so far advanced. Provident's experience with other mergers shows that combination can effect major economies. Projections in this merger show savings of more than \$1.5 million a year in salaries, equipment expense, general expense, occupancy costs, and accelerated availability of funds.* Major areas of saving in handling Central-Penn business are automation of consumer credit, trust operations, and transit operations and improved lock box, loan and collection procedures. Additional savings are to be expected from more intensive use of computers.

Also, the larger bank will be able to afford the kind of operations research that has led to development of such services as credit cards, ARP, lock box service, ready reserve accounts, and freight payment plans—all developed by leading banks. The merged institution cannot promise that it will develop a major innovation, but it will be in a much better position to do so.

Mr. Carr is also generally responsible for personnel and will testify as to the keen competition in recruitment.

Harold F. Still, Jr.—President, Central-Penn National Bank

Experience

Federal Reserve Bank of Philadelphia in 1946. Joined Central-Penn 1948. Served in Commercial Loan Division, Business Development Department, on Operations Committee, and later as Assistant to the President. Became President in January 1963 and chief executive officer in December 1965.

* Because these projections were not complete when merger application was filed, they are not reflected in Schedule V thereto.

Testimony

Modern history of Central-Penn stems from 1930 merger of Central National and Penn National. The resulting bank was a commercial bank in true sense of the word, serving largely commerce and industry.

In 1950, consumer lending was added through merger with Charter Bank. This division has grown substantially. Commercial loan portfolio has also grown. These are two major fields of bank's activities today. Central-Penn has one of largest portfolios of automobile dealer paper among banks in Philadelphia. While Provident also has substantial amount of automobile dealer paper, it is not in significant competition with Central-Penn. Central-Penn mostly finances local dealers on a non-recourse basis. Provident finances dealers outside four-county area (and often outside Pennsylvania) on a recourse basis.

Central-Penn's traditionally strong position in commercial banking brought it many customers of regional and national size—as well as many smaller businesses. Approximately 50% of its deposits and more than 50% of its loans are with companies who can easily do all or most of their banking in other cities. [This figure is based on criteria used by Judge MacMahon in *Manufacturers-Hanover*, supplemented by review of larger accounts.]

Recent changes in banking and competition have affected Central-Penn's business. Banks can no longer count on obtaining funds through demand deposits and lending them out on a short-term, self-liquidating basis. Corporations have reduced demand deposits. In some cases they have converted to interest-bearing deposits, which increase the bank's costs. In others they have become suppliers of credit in competition with banks. Commercial loans have tended to become longer in term, more complicated and less liquid.

Rising costs mean bank will have to automate and increase volume in order to achieve economies. Change in loan portfolio means bank will have to attract and provide

more highly-trained and specialized lending officers. Both these changes require a larger capital cushion.

Consumer lending has also become less profitable. Central-Penn encounters competition especially from finance companies and First Pennsylvania. This competition, together with rising money costs, has lowered profit margins. Here, also, solution is a heavy investment in equipment to automate the consumer credit operations and achieve economies which would permit more effective competition. In consumer field this means lower rates for borrowers. Likewise, more automation should permit lowering of service charges.

Increased automation and savings in operating costs from merger (pointed out by Carr) will help to solve problems in both commercial and consumer lending.

Another reason for merger is to broaden the line of services offered by the bank. Customers expect the full line available at larger Philadelphia and New York banks. Examples: accelerated check collections, complicated credit arrangements, financial guidance, EDP-services, trust services, pension and profit sharing trusts, international services, corporate trust. The demand for full service is not confined to the larger customers in the national and regional market. Even small and medium-sized companies want to have these services available in case of need. Central-Penn must meet these expectations on the part of its customers or see them drift away to other banks. Some have taken substantial portions of their business to other banks where such services are available. After the merger, Central-Penn's business customers will have available the services of Provident's large and specialized commercial department (to be described by Hillas).

School districts and other municipal units are operating on a bigger scale and demand more sophisticated services comparable to those demanded by substantial businesses. They also expect their banks to purchase their bonds, which are being sold in larger issues.

Development of specialized services is dependent on volume—having enough transactions of any given kind to warrant having an expert. Central-Penn does not have sufficient volume. Also, its earnings are not sufficient to enable it to hire high-priced, expert personnel in competition with larger banks which are more heavily capitalized and have better earnings (primarily from trust departments) and can spend money to develop an expert staff.

Prestige is also a factor. Small businessmen like to deal with large banks. Large businesses like to deal with banks that are considered leaders in their communities. Country banks like to have large banks for their correspondents. Business and community leaders like to serve on boards of large banks. While merged bank will still be only fourth in size in Philadelphia, it will be three times the size of Central-Penn and, as a "billion dollar" bank, its stature will be greatly enhanced.

Central-Penn needs a larger trust department which will attract and retain business and operate at a profit commensurate with its larger competitors. The merger will solve this. Central-Penn also needs a very much larger international department. Even after merger much work will remain to be done to achieve competitive parity with PNB and First Pennsylvania in international field.

In the field of EDP, Central-Penn felt it could not afford to take the lead and is now finding it expensive to catch up. Again, this presents a drain on capital. Yet economies from automated operations and the income from EDP services are becoming more important in earnings of commercial banks. Also essential in retaining correspondent bank and commercial business. Merger with heavily-capitalized Provident provides an answer.

Before merger was negotiated, Central-Penn had begun exploration of ways of raising additional capital and obtaining additional office space and perhaps a new head office. Both of these will be solved by the merger.

The developments outlined above are reflected in Central-Penn's earnings, which have, in general, been the least

satisfactory of the Philadelphia reserve city banks. In order to break even, Central-Penn requires a higher yield on its loans and investments than the other banks. Resultant lower earnings have depressed stock prices.

Central-Penn must move forward if it is to satisfy stockholders and maintain a first-rate staff. Would have to double in size just to catch nearest competitor (Provident), assuming that Provident did not grow in the meantime. Such a change in "order of magnitude" can't be expected in ordinary course. Growth through retained earnings is slow. De novo branching is limited by law and expensive. Merger with country banks is not attractive because of stock prices and premiums demanded by country banks. Merger with Provident provides best solution because of complementarity in capital, fields of specialty, and branch systems.

The combined bank could offer better service and compete more effectively in retail banking, trusts, complex term financing, correspondent banking, foreign and international business, EDP services and the business of regional and national concerns.

Merged bank will also be in much better position to attract corporate deposits through the issuance of negotiable certificates of deposit in competition with New York, Chicago and California banks. In this field, the value of the certificate is based on the credit of the issuing bank. Many large companies will not buy a certificate issued by a bank as small as Central-Penn. While neither Provident nor Central-Penn have used this device extensively in the past, the ability to do so in the future may be of great importance to assure the merged bank that it will have funds available to meet the needs of its customers.

Important to note that competition among banks is in field of service to customers more than for isolated deposits and loans. A customer who maintains deposit balances expects that his borrowing needs will be fulfilled. A bank which meets a customer's needs for funds expects to

receive his deposits. More and more the relationship is further dependent on a full line of services rendered or available from the bank to its customers. Central-Penn's merger with Provident is a response to the need for more complex and sophisticated service to retain and attract customers.

Roger S. Hillas—Executive Vice President, Provident National Bank.

Experience

Joined Provident executive development program in 1951. Served in Special Business Investment Department from 1954 through 1962, becoming Vice President in charge of the Department in 1960. Moved to Commercial Division in 1962 and became Executive Vice President in charge of this Division in 1964.

Testimony

Provident's commercial division has about 175 people. The national group in its metropolitan department serves customers and seeks additional customers as far south as Florida and as far west as Chicago. Representatives visit these cities on a regular basis three or four times a year. Approximately 60% of Provident's total deposits and 70% of its loans are accounted for by customers of the national group and other customers who are not limited to Philadelphia banks. These proportions are based on the criteria laid down by Judge MacMahon in the *Manufacturers-Hanover* case, and have been confirmed by a review of Provident's large deposits and loans.

Another important department within the commercial division is construction loan. Personnel includes three full-time field inspectors. Procedures provide disbursement on vouchers directly to trade creditors of contractor. These assure the owner that he is getting what he pays for. Can be used by small builders, small companies building plant facilities, and even individual homeowners. Central-Penn's services are much more limited.

Most customers of commercial division deal with more than one bank. This gives them access to broader lines of credit. Also enables them to compare services. When multiple-line customer needs substantial financing, it is usually arranged through bank extending largest line—the "lead bank." The lead bank works out the details (often complex). Other banks merely participate. Being lead bank enables bank to develop expertise. This is helpful even to small customers, many of whom present complicated situations needing all the expertise demanded by large financings. If Philadelphia banks can improve their reputation for handling complex financing, that will help attract new businesses and new ventures to Philadelphia.

Opportunity to be lead bank depends largely on size of lending limit. Provident, with comparatively large limit among Philadelphia banks, arranges substantial number of complex financings—many more than Central Penn. Merged bank would do more. Also, merged bank would be better able to hold lead position against New York banks. As customers grow, New York banks tend to take lead position in financing, then they tend to take over completely in pensions, corporate trust and other relationships.

New York banks have pre-eminent position in pension and profit sharing and corporate trust. Latter aided by requirements of stock exchanges. These specialties give New York banks advantage in soliciting corporate customers.

The commercial division constantly encounters competition from New York, Pittsburgh, and other larger banks. They offer package financing, staffs of experts and specialized technical services. Provident itself has developed specialties: acquisition and disposition of businesses, construction lending, securities transactions, certain railroad technicalities. Larger volume of business in merged bank should make possible the development of additional skills. This should encourage the growth of local economy.

David S. Randolph—Vice President, Provident National Bank

Experience

First employed in 1945 at Market Street National Bank where he became a Vice President. Following the merger of Market Street into Tradesmens Land Title in 1955 and the Provident-Tradesmens merger in 1957, Mr. Randolph was appointed Manager of Provident's Market and Juniper branch, the former head office of Market Street National. He was given charge of all Delaware County branches in 1958, and of the entire Branch Administration Division in 1962.

Testimony

Retail banking is increasingly important as banks derive a larger proportion of their deposits from their branches. City banks need extensive branch systems to enable them to follow their customers and compete effectively. Both Provident's and Central-Penn's systems contain large gaps which would be filled in large measure by the proposed merger. In addition, the combination of the two banks will lead to economies in advertising and marketing techniques and thereby strengthen their competitive position.

Most customers choose a branch on the basis of convenience. Examples are individuals who bank near their residence or place of employment. Small and medium-sized businesses also bank by convenience, particularly where a nearby depository for cash receipts is required. A principal convenience factor is travel time—by automobile in the suburbs, and by foot or public transportation in the city. Thus, branch customers tend to be clustered near the branch convenient to them. An inconvenient branch has little chance of obtaining their business.

It is possible to determine, by plotting customer locations, the primary service areas of branches. Because of the

importance of the convenience factor, branches whose service areas do not overlap are not in competition.

As indicated earlier, Provident and Central-Penn's branch systems are uniquely complementary; and this fact was pointed out by the Banks in their application to merge. Thereafter, in its advisory opinion, the Federal Reserve Board singled out several pairs of Provident and Central-Penn branches which the Board said were in competition. At that time, Provident retained First Research Corporation, Miami, to delineate primary service areas for the branches in question. First Research's report, which found substantially no overlap, confirmed the Banks' position. Since then, First Research has delineated primary service areas for virtually all the branches of the two banks. As appears from these maps, the overlap of the systems of the two banks is miniscule.

Commercial banking branches compete vigorously with many other financial institutions for retail business. For example, they compete with mutual savings banks, savings and loan associations and credit unions for savings deposits. Historically, United States Government savings bonds were also an important factor, and they could become important again in the future. On the loan side, commercial banks compete increasingly with small loan, finance, and consumer discount companies and credit unions for personal loans and with the mutuals and S&Ls for mortgages. Every Provident and Central-Penn branch has numerous competing financial institutions located within and adjacent to its service area. In most of the areas served by Provident and Central-Penn branches there are more financial institutions today than there were when the branch was established or acquired.

The proposed merger will bring better facilities and services to the customers of Central-Penn's branches. Apart from the specialized services in the trust, construction loan, and other fields which have been described by other witnesses, Provident's substantial staff organized

entirely to serve the branches enables it to give specialized training and assistance to branch personnel which Central-Penn's limited organization does not now provide. Provident has a branch profitability accounting system which, when installed at the Central-Penn branches, will enable them to improve efficiency. While both banks strive to provide personalized service, Provident has placed somewhat more emphasis than Central-Penn on delegation of authority (particularly lending authority) at the branch level. This delegation promotes innovation and more imaginative service to customers.

An important improvement in service to small and medium-sized business customers of Central-Penn will be Provident's decentralized lending authority system. Under this program, branch managers have lending authority within specified limits which enables them to approve loans on the spot. In addition, larger loans can be approved immediately by regional managers without the necessity for contacting the main office. Finally, loans up to \$250,000 can be made by the branch administration division without further credit approval by Provident management.

Provident's belief that services at the branch level will be improved by the proposed merger is borne out by its experience in past mergers. Example is the growth in trust business in the Delaware County branches after they were acquired by Provident, showing a large need which was not appreciated by the customers until the trust services were offered on a more personalized basis. Another example is the availability of industrial and commercial mortgage loans to former customers of Second National, which did not make loans of this kind.

Each branch or regional group of branches serves the nearby community and meets competition from banks and branches in the same neighborhood. In cases where Provident acquired branches by merger, the services and facilities have been improved and the competition with other banks in the neighborhood has increased since the acquisition.

Erwin Weber—Vice President, Provident National Bank

Experience

Before 1926, worked in large German commercial bank, then in foreign department of Irving Trust Company in New York, where he became head of the foreign credit department in 1941 and head of the foreign trade information service in 1947. Joined Tradesmens Bank Title in 1955, became head of International Division of Provident Tradesmens (now Provident National) in 1957.

Testimony

Services of Provident international division include letters of credit and acceptance; financing for imports, exports, goods in transit, overseas investments and foreign investments in this country; remittances and collections; foreign exchange; assistance in foreign trade development, foreign investments and government programs.

Provident personnel maintain contacts in the United Kingdom, Switzerland, Common Market nations, Scandinavian countries, Near East, Hong Kong, Philippines, Japan, Australia and New Zealand. Larger bank would have wider coverage.

Provident has relationships with numerous foreign banks in the principal countries of the free world. These banks are often much larger than banks in U.S. They prefer to deal with large American banks. Merged bank would be more acceptable to them.

New York banks have tremendous advantage in the international and foreign field by reason of their size and reputation. They do the vast bulk of the business in this field, followed by banks in Chicago and on the West Coast. They make important foreign loans, which attract collateral banking business. Even the largest Philadelphia banks are small in the international field when compared with New York.

Provident has a small Edge Act corporation—a subsidiary which can invest in foreign equities as well as make loans. This operation also requires skill and experience, which are developed by larger banks. An Edge Act corporation allows the bank more flexibility in serving U.S. customers with foreign interests. Expansion of Provident's Edge Act subsidiary would help retain such customers in Philadelphia and attract other potential customers in this area who now seek assistance elsewhere.

A trade development program is operated by Provident to encourage exports, particularly through Philadelphia port. Representatives call on firms and country banks throughout eastern Pennsylvania. Encouraged by Department of Commerce. Program is expensive. Larger bank after merger could do more of it.

B. OTHER WITNESSES

Frederic A. Potts—Chairman of the Board, Philadelphia National Bank

Experience

With Dominick and Dominick and later J. W. Davis & Co., investment bankers, 1926-41, having become a partner of latter in 1928. Joined PNB in 1941, became President 1947 and Chairman of the Board and chief executive officer 1964. Chairman, Greater Philadelphia Chamber of Commerce, Southeastern Pennsylvania Economic Development Corp., Citizens Advisory Committee of the Community Renewal Program, and Commissioners of the Sinking Funds, City of Philadelphia; Director, Greater Philadelphia Movement, Food Distribution Center, Old Philadelphia Development Corporation, Philadelphia Industrial Development Corporation, United Fund of Philadelphia Area, and University City Science Center.

Testimony

A city's banks are important in attracting and retaining businesses, particularly large businesses, and those of

an entrepreneurial nature which have complex financial needs. The size of the banks plays an important part in this. People expect larger banks to have more experience—also larger staff of experts and specialists. Philadelphia banks are small by comparison with New York, Pittsburgh, Boston and other cities. This has contributed to the static reputation of Philadelphia in the eyes of the business community. Creation of larger banking units would improve Philadelphia's reputation and help improve its economy. This was one of the basic reasons for proposed merger of PNB and Girard.

The Provident—Central-Penn merger will improve the standing of the Philadelphia banks as a group in comparison with the banks of other cities. The combination of Central-Penn's experience in traditional commercial lending and consumer lending and Provident's skills in trusts, construction lending and specialized financing will make a truly competitive full-service bank.

The merged institution will be able to compete more intensively with PNB. This has been the result of other mergers in the past, notably Girard Trust-Corn Exchange and Pennsylvania Company-First National. The full-service, billion dollar banks that resulted from these mergers have provided competition for PNB at every level. One major reason is their ability to hire qualified personnel. Banks must bid for graduates of colleges and business schools against all other employers. There aren't enough candidates to go around. Large banks which can make best use of modern cost saving methods and equipment can pay higher salaries. Also, they offer the chance to specialize—to become an expert—which is an added attraction.

The mergers which created IVB and Continental were also pro-competitive in the sense that the resulting institutions are more capable and aggressive than their components were before the merger. The businessman, promoter, developer, financier or investor who needs expert and sophisticated bank services has a wider choice in Philadel-

phia today than he did 10 years ago or 20 years ago. The Provident-Central-Penn merger will improve the situation still further.

The economy of Philadelphia has been lagging in recent years. A number of head offices of substantial businesses have been lost through merger and otherwise. Also, the number of jobs has not grown as fast as the population. The Southeastern Pennsylvania Development organizations were formed to attract and retain business in the Philadelphia area—particularly growing businesses which will supply new jobs. These businesses, although they are small, often have complicated financial needs. They do not have specialized personnel on their own staffs and must rely on their banks for expert information, advice and service. The merged bank will be better able to fill this need.

The Port Corporation and Science Center represent other efforts to improve the Philadelphia economy. Studies show that the best chance of achieving such improvement lies in port-oriented and science-oriented enterprises. Both these kinds of business need specialized banks. It takes a large international and foreign department to provide international and foreign banking services on a scale competitive with New York. As for science, it takes experience and expert personnel to evaluate the financial needs and prospects of these businesses. The Philadelphia Port competes directly with the New York Port. One of the advantages of New York is its ability to offer banks with the largest foreign and international connections in the country. The merger will be a step toward putting Philadelphia on a competitive par.

Bertram W. Zumeta—Economist, Philadelphia Electric Company

Experience

Graduate of Franklin & Marshall College, A.B.; graduate studies in economic statistics at University of Pennsylvania. Instructor in Statistics at the University of Pennsyl-

vania 1946 through 1959, interrupted for military service through the years 1951 to 1953; Associate Economist, Federal Reserve Bank of Philadelphia, August 1959 to 1961; Economist, Federal Reserve Bank of Philadelphia, 1962 through July, 1966. Lecturer in Economics, Rutgers University (University College) 1949-1951; Research Statistician, The Institute for Cooperative Research, University of Pennsylvania, 1954-1958; Lecturer in Statistics, University of Pennsylvania (Wharton School and Wharton Graduate Division) 1959-1963.

Author of numerous articles in "Business Review" published by Federal Reserve Bank of Philadelphia; also: "What Attracts Growth Industries?" in New Jersey Business magazine, April, 1965

Articles in special supplements to Philadelphia Evening Bulletin:

Three articles reviewing regional economic developments and prospects, in the "Year-end Review" section, January 1963, 1964, 1965

Article describing diversified economy of the Philadelphia area, in special financial analysts' supplement, May, 1965

Chapters 2, 9 and 10 of THE PROJECT ENGINEER, University of Pennsylvania, The Institute for Cooperative Research, Philadelphia, 1956.

Testimony

For a considerable number of years, the economic growth of the Philadelphia Standard Metropolitan Statistical Area has lagged behind the growth in many other metropolitan areas and in the nation as a whole. The major and most reliable evidence of this condition is in employment growth, which has been much less in the Philadelphia area than in the nation.

Studies by the Federal Reserve Bank of Philadelphia and The Greater Philadelphia Movement identified the fol-

lowing factors aggravating the economic problems of the Philadelphia area: deficiencies in skill, training and motivation of the labor force, failure to attract and stimulate growth of science-based firms through assistance in financing and otherwise, neglect of possibilities for stimulating economic development by certain governmental units; failure to overcome the reputation that Philadelphia is somewhat old-fashioned and unaggressive in its ways of doing business. Banks can assist in countering Philadelphia's lagging economy by supporting the development in the area of science-based firms of a growth nature. Larger banks are in a better position to accomplish this, because their size permits specialization of lending personnel.

John H. Frazier—Director of Port Development, Delaware River Port Authority

Experience

Worked in grain business and U. S. Department of Agriculture. Served as Managing Director of the Commercial Exchange of Philadelphia. Joined Delaware River Port Authority, 1953; became Director of Division of Port Development, 1957.

Testimony

The Delaware River Port Authority was created by a Compact between the Commonwealth of Pennsylvania and the State of New Jersey. This Compact charges the Authority with the responsibility of "promoting the Delaware River as a highway of commerce."

The Authority, through its Division of Port Development prepares and distributes literature, maps, motion pictures and articles on the advantages of the Delaware River Ports; conducts a media advertising program in trade journals and newspapers; collects, tabulates and publishes port statistics; and maintains seven regional offices for the solicitation of cargo through the Ports of Philadelphia. These

offices are located in Philadelphia, New York, Pittsburgh, Chicago, Washington, London and Brussels.

The Port of New York is Philadelphia's greatest competitor, in fact it occupies a dominant position among ports with 1/3 of the nation's foreign general cargo. New York's annual general cargo volume is in the neighborhood of 16 million short tons, three to four times the volume handled at Philadelphia. General cargo makes a much larger contribution to the local economy than bulk cargo because of related activities such as stevedoring, warehousing, transportation and packaging.

In competing for general cargo, Philadelphia's representatives are constantly reminded by shippers of the greater availability of various ancillary services for foreign traders in New York. One such service, particularly important in connection with general cargo, is that of banking establishments with international departments. Availability of financing arrangements has a direct bearing on the port chosen for import or export.

While New York has at least fifty banks with international departments, Philadelphia has less than a half dozen, none of which is truly competitive with the giants in New York. According to the 1965 New York Port Handbook (page 142), "Over 70 percent of the international commerce of the United States is financed by banks in this (New York) district."

Merging Central-Penn with Provident National should improve Provident's services because it will provide greater resources in a single institution. As a rule, the larger banks have more international contacts and can provide service to the large tonnage shippers.

The handling of port tonnage provides employment for thousands of workers. It has been estimated that each ton of general cargo produces over \$16 in direct revenue to a port area. Merger of Central-Penn with Provident should assist in producing more cargo for the Philadelphia Port and provide an additional sales tool in our campaign for a

more equitable share of the cargo moving through North Atlantic ports.

William Zucker—President, Southeastern Pennsylvania Development Fund and Southeastern Pennsylvania Economic Development Corporation

Experience

1940-41, interned with National Institute of Public Administration. 1941-43, administrative officer Labor Division—War Production Board. 1943, administrative management specialist, Brewster Aircraft Company. 1944, auditor, Price Waterhouse and Company. Secretary, Commerce and Industry Association, 1944-1959. Vice-President, Downtown-Lower Manhattan Association, 1959-1964. Joined Southeastern Pennsylvania Development organization in 1964.

Testimony

The Southeastern Pennsylvania Development Fund and the related Corporation were formed to meet the need for more businesses and more jobs in the economic community centering on Philadelphia, and to stem or compensate for the loss of business which has occurred in the area in recent years. Its efforts to date have centered upon small businesses, many of them in the early stages of development.

Despite the fact that these businesses are small in size, they tend to need specialized and imaginative financial advice and financing such as only larger banks with specialized and expert personnel can provide. Particularly true of the Negro community. Among the Philadelphia banks, Provident is one of the leaders in this kind of complex financing. However, the ability of any bank to handle matters of this kind is limited by the financial and personnel resources available to it. The merger with Central-Penn will make greater resources available to Provident, and this

in turn should enable Provident to expand its specialized financing. There can be no doubt that this would facilitate the efforts of the Southeastern Pennsylvania Development organizations and help the economy of Philadelphia and the surrounding areas.

Richard J. McConnell—Executive Vice President, Philadelphia Industrial Development Corporation

Experience

Served as certified public accountant and in other financial capacities with accounting firm, industry and the Treasury Department, 1940-53. Served with City of Philadelphia in Department of Finance, 1953-61, becoming Director of Finance in 1956. Served with PIDC from 1962 to present.

Testimony

PIDC was organized to attract and retain business in Philadelphia by assisting companies to obtain adequate space and in the financing of industrial real estate. The reason for its formation was the critical need of Philadelphia to retain and create more jobs. Originally emphasis of PIDC was on retaining manufacturing jobs. Today the emphasis is on retaining and expanding Philadelphia's industry as well as bringing new companies into Philadelphia.

Most PIDC transactions are financed—at least partially—through commercial banks. These are not traditional short-term self-liquidating loans. Rather, they are long-term loans of considerable complexity.

Efforts to recruit new businesses for Philadelphia are sometimes hampered by a feeling that it is a small town in some of its services. Commercial banks are part of this reputation. Some businessmen feel that they are too small to provide the kind of advice and assistance that modern

businesses' need. Regardless of truth, this reputation is hard to overcome.

Merger of Provident and Central-Penn should help this situation. The Philadelphia area is one of the great metropolitan centers of the country and is one of the world's great industrial areas. Modern and expanding industry requires modern and expanding services and facilities. There are emerging and expanding major industrial firms in Philadelphia which need substantial additional resources and services from the banking community. The merged bank will have more resources to finance businesses. Also, the creation of another billion dollar bank will help to establish Philadelphia as a major financial center.

J. A. Livingston—Financial Editor, Philadelphia Evening Bulletin

Experience

Columnist and executive editor of New York Daily Investment News, 1931-34; public utilities editor of Financial World, 1934-35; economist for Business Week, 1936-42. Served with War Production Board and Office of War Mobilization and Reconversion, 1942-45.

Author of column "Business Outlook" and financial editor of Philadelphia Record, 1945-47. Economic columnist for Washington Post in 1947. Financial editor of The Philadelphia Bulletin since 1948. Author of numerous articles and publications.

Testimony

Job of the financial editor, among other things, is to observe and report on financial community in Philadelphia, including commercial banks.

Banking is a qualitative business. The benefits to the community depend on the quality of service—the imagination and intelligence of the officials in banks—rather than the number of banks that render the service. As banks get

bigger, then it becomes increasingly important for competitors to get bigger in order to compete for capable men in the labor market. Also, as computerization is introduced, banks must develop larger volume to make the best use of this equipment. In a city such as Philadelphia, the smaller bank is not always able to meet the wants of the small businessman or the daring, out-of-the-usual businessman, because it hasn't the financial assets, the capital, to meet losses. It is far from certain that a merger reduces opportunities of businessmen to get loans. It could increase them.

In Philadelphia, banking is less concentrated than in most comparable cities; e.g., Pittsburgh, Boston, Houston. Also, the largest Philadelphia banks are smaller than the largest banks in other cities.

There is keen competition among Philadelphia banks, an example being the race for savings. First Pennsylvania borrowed from Franklin National of Long Island the idea of 5-year, $4\frac{1}{2}\%$ savings bonds which, if held to maturity, yield slightly more than 5%. All Philadelphia banks followed suit. Then PNB offered straight 5% on certificates of deposit of \$2500 or more held for nine months. Then First Pennsylvania offered \$25 certificates bearing 5% if held six months. Then Fidelity offered 5% certificates with attractive payment features.

Dr. Henry Kaufman—Economist, Salomon Brothers & Hutzler

Experience

B.A. in economics from NYU in 1948, M.S. in finance from Columbia in 1948, Ph. D. in banking and finance from NYU, 1958. Credit officer with Peoples Industrial Bank and then with Manufacturers Trust, 1949-57. Employed in research department of Federal Reserve Bank of New York 1960-61. Joined Salomon Brothers & Hutzler in 1962.

Testimony

In recent years there have been substantial changes in activities of commercial banks on both sides of their bal-

ance sheets; i.e., in the kinds of liabilities they assume in order to obtain funds and in the loans and other investments they make with the funds so obtained. The result has been to bring the banks into competitive relationships with other institutions with which they were traditionally considered non-competitive.

On the liability side, the raising of permissible interest rates allowed banks to compete with savings institutions for household savings. Banks attracted corporate funds through issuance of certificates of deposit, which were competitive with other short-term investments. Banks also found markets for capital debentures and notes, which permitted them to obtain funds on a longer-term basis. Demand deposits declined in relative importance. The banks' ability to attract funds, even from foreign sources, has had an effect on the cash balance of payments.

On the asset side, the business customers of the banks have relied almost exclusively on debt financing. They have looked to banks to provide not only short-term, self-liquidating loans, but longer loans to finance new processes, products and equipment, other longer-term needs. At the same time, banks have become principal suppliers of long-term funds to municipalities through purchase of municipal bonds. They also supply a large share of consumer credit and an increasing amount of mortgages. These activities bring them into competition with insurance companies, savings institutions, pension and retirement funds, and other investors.

In some aspects of short-term lending, banks are also encountering new competition, this time from large corporations which supply short-term funds to securities firms through repurchase agreements. Formerly these funds would have been deposited with a bank, which in turn would have loaned them to the securities firm.

Overall, it can be said that banks' activities are intermeshed with those of other financial institutions operating in both the long- and the short-term money markets.

G. Edward Cooper—Executive Vice President, Philadelphia National Bank

Experience

Employed by The Philadelphia National Bank February 1926, appointed Assistant Cashier in 1945, and progressed thereafter to Executive Vice President. Responsible for Operations, Systems and Planning, and Building Management at the present time. Served as a member of the Bank Management Committee of the American Bankers Association from 1954 to 1964 and was Chairman from 1959 to 1964. This Committee was responsible for the research and the development of automation for the banking system.

Testimony

Modern automation of bank operations can be said to have begun with development of MICR during mid-50's, coupled with improvement in check handling machines. In late 1950's, computers were introduced, first for record keeping, later to provide bank management with information for credit allocation, portfolio evaluation and similar functions to permit informed judgment on the use of funds and control of costs.

City banks offer computer services to smaller correspondents, including computerization of correspondent's operations, computerized information for the correspondent's management, and computerized services for correspondent's customers. Competition is keen. Country banks receive proposals from several banks, often in different cities. PNB considers itself one of leaders in Philadelphia. Principal competitor is First Pennsylvania. Also, Pittsburgh and New York banks.

EDP services provided by city banks to country banks enables them to provide services they could not otherwise afford, and thus improves quality of their services to their customers.

Banks also provide computer services to their customers; payroll accounting, accounting for savings and other financial institutions, accounts payable, account reconciliation. In this field they meet competition from service bureaus and from computer suppliers trying to persuade the customers to obtain equipment of their own.

Automation of internal operations and provisions of EDP services to correspondents and customers is expensive and time consuming. Equipment costs are high. Time and money are needed to develop programs. Equipment must be used near capacity to be profitable. Small banks obtain services from larger banks. Medium banks can and do obtain equipment and provide services to customers and to other banks. Big banks have no monopoly.

Important area of competition today is in attracting and holding qualified personnel, particularly those with mathematical specialties who are in great demand by technical, scientific and research companies. Among Philadelphia banks, only PNB and First Pennsylvania have such experts. New York banks have as many as six. Boston and Pittsburgh are also ahead of Philadelphia. Such people are working on innovations and new departures such as automated credit transfers within and among banks, the so-called "checkless society."

Overall effect of automation has been to provide better and more extensive services to customers of commercial banks. It has improved productivity, lowered costs and increased efficiency. The banks could not handle their present volume of business without it.

Nevins D. Baxter—Assistant Professor of Finance, Wharton School of Finance and Commerce, University of Pennsylvania

Experience

Education:

B.A. Columbia University (summa cum laude)
M.A. Princeton University (Economics)
Ph.D. Princeton University (Economics)

Positions Held:

Assistant Professor of Finance, Wharton School of Finance and Commerce, University of Pennsylvania, 1964-

Consultant, MATHEMATICA, Princeton, New Jersey, 1964-

Consultant, Federal Reserve Bank of Philadelphia, 1965-

Consultant, U.S. Treasury Department, Office of the Comptroller of Currency, 1966-

Research Associate, Econometric Research Program, Princeton University, 1964-

Instructor in Economics, Princeton University, 1963-64

Consultant, Bankers Trust Company, New York, 1960-63

Fellowships and Awards:

Woodrow Wilson National Fellowship, 1961-62

H. B. Earhart Fellowship, 1962-63

Harold Stonier Fellowship in Banking, 1963-64

Ford Foundation Faculty Summer Research Fellowship, 1965

Principal Investigator, National Science Foundation Grant for "Empirical Study of Corporate Financing Decisions", 1966-

Professional Affiliations:

American Economic Association

American Finance Association

Royal Economic Society

Fields of Specialization:

Money, credit and banking

Business finance

Public finance

Testimony

Customers of commercial banks have become more sophisticated in recent years, and this has required the banks themselves to provide more expert and specialized services.

Almost one-half the country banks in the Third District now buy or sell federal funds, as compared with just over one-third in 1965. These transactions are handled through and with the advice of city correspondents. City banks, in order to provide complete service to their country correspondents, must have experts in this field.

Corporate treasurers also make demands on their banks. With rise in interest rates, corporate treasurers reduced demand deposits and put excess funds into government securities and commercial paper. This forced banks to offer certificates of deposit to compete for the funds. Many corporate treasurers also expect more service from their principal banks. They expect their banks to be able to handle any kind of financial transaction the corporation may need; for example, accounts receivable financing, equipment leasing, EDP services, foreign banking, and international commerce. Municipal and institutional customers have similar needs.

City banks which cannot meet these increasingly complex demands because of a lack of experience or specialized personnel or otherwise are at a competitive disadvantage in attracting and retaining the more progressive customers and in competing with the more specialized city banks which are able to offer these services.

Philip Walsh Moore—Chairman, First Research Corporation, Miami, Florida

Experience

Graduate of Princeton University; obtained M.A. degree at New York University Graduate School of Business Administration. After World War II, was securities

and economic analyst for First Boston Corporation, 1945-48; Assistant to the President, Schroder Rockefeller & Co., 1948-50. In 1950 formed First Research Corporation, a market research firm specializing in financial institutions, retail establishments and general consumer marketing.

Testimony

Under Mr. Moore's overall supervision, First Research Corporation has delineated the primary service areas of all the offices of Provident and Central-Penn, with the exception of the head offices; the offices at 17th Street; the offices at 12th Street; and the Provident office at Juniper and Market Streets. In Mr. Moore's opinion, there is an insignificant overlap at the present time between the branch systems of Provident and Central-Penn.

It is also Mr. Moore's opinion that neither the branch system of the Provident nor that of Central-Penn, as presently constituted, provide thorough coverage of all or even most of the developed portions of the Philadelphia four-county area. In contrast, the individual branch systems of Philadelphia National, Girard Trust and First Pennsylvania provide these banks with more complete systems of branch representation throughout the region. If combined, the Provident and Central-Penn branch systems will provide excellent coverage and they will be better able to compete effectively with Philadelphia National, Girard Trust and First Pennsylvania throughout the four-county area.

Jack M. Guttentag—Associate Professor of Finance, Wharton School of Finance and Commerce, University of Pennsylvania

Experience

Graduated from Purdue University 1948; received M.S. from Columbia University in 1949 and a Ph.D. from Columbia University in 1958. Between 1948 and 1954 was at various times an instructor at Elmira College, Elmira, New York; housing market analyst for the Federal Housing

Administration; and economist for Prudential Insurance Company. Served as economist for the Federal Reserve Bank of New York from June 1954 to August 1962. Joined the faculty of the University of Pennsylvania in September 1962.

Testimony

Professor Guttentag will express the opinion that the concentration statistics in the plaintiff's summary of evidence (and in the complaint and the plaintiff's pretrial brief) do not show that the merger will have a significantly adverse effect on competition. Concentration ratios and increases therein do not necessarily indicate an anti-competitive effect. In certain situations concentration ratios may indicate an anti-competitive effect, but in this case the statistics are not meaningful because they are not based on a proper analysis of either the product market or the geographical market.

If a concentration ratio is to be a meaningful index of competition, it must be based on a correct account of all the competitors and their shares of the markets in which they compete. Plaintiff's statistics assume a single product, termed "banking services," and ignore the diverse products which the banks actually provide for their various customers. The effect is to ignore many suppliers of these services who are in direct competition with the banks and should be included in any statistics as to concentration. The plaintiff's statistics take into account only banks having offices in the Philadelphia four-county area and give no effect to competition from banks located outside the area. Again, the effect is to ignore suppliers who should be included in the concentration figures.

In point of fact, the geographical area in which banks compete varies in respect of different services and also in respect of different kinds and sizes of customer. The area of competition in retail banking may have a radius of a few blocks in urban areas or a mile or two in rural areas. The area of competition in correspondent banking encompasses

several states. The area of competition for substantial corporations includes the Mid-Atlantic region or, indeed, the entire United States. The range in these areas is so great that it would not be meaningful to strike an average among them. Thus, neither the four-county area nor any other single area would be satisfactory from the point of view of economic analysis. Different areas would have to be used for the different services and classes of customer. Such an analysis would not have been unduly difficult for the plaintiff's witnesses to make.

Even if the plaintiff's concentration statistics were based on a proper delineation of product and geographical markets, they would not be of substantial significance. The prevailing level of concentration in Philadelphia is low in relation to other metropolitan areas, and there are a large number of small banks in the Philadelphia area which provide alternative sources of banking service for small and intermediate size business customers. Both of the banks involved in the merger are very substantially smaller than the leading banks in the area. The increase in concentration resulting from the merger is relatively small. Such studies as have been made with respect to the relationship between bank concentrations and competition would indicate that, even on the basis of the plaintiff's own concentration figures, any anti-competitive effects of this merger would be negligible.

Comparisons between the plaintiff's concentration ratios in this case and concentration ratios in non-banking industries are not significant because of the defects in the plaintiff's statistics mentioned above, and also because, in banking, competition is often maintained at higher concentration ratios than in industry generally. Moreover, as banks get larger they tend to supply a wider variety of services and to become more aggressive competitors. Thus, a merger such as that of Provident and Central-Penn may well improve the quality of banking services without causing any significant diminution in competition.

**COMPTROLLER OF CURRENCY'S LIST OF
WITNESSES WITH A BRIEF SUMMARY
OF THE EXPECTED TESTIMONY
OF EACH.**

In accordance with the Court's instructions (Transcript of Proceedings of October 26, 1966, p. 13 and of November 9, 1966, p. 26), there is submitted below the Intervenor's List of Witnesses together with an outline of the expected testimony of each.

It is anticipated that some of these witnesses will be dropped as evidence is developed during the trial. Due to the difficulties of scheduling meetings, a few prospective witnesses have not as yet been interviewed. For this reason, the Intervenor may supplement this listing at a later date.

The order of the listing of names does not indicate the order by which the witnesses will be called to testify.

1. *James J. Saxon*, Comptroller of the Currency, Treasury Department (Nov. 1961-1966), will testify relative to the reasons for his approval of the merger of Provident National and Central-Penn National banks. He will discuss the national policy of the Comptroller's Office and how the above-mentioned merger fits into the policy. In connection with the Provident-Central-Penn merger, Mr. Saxon will discuss the anti-competitive effects; the pro-competitive effects; the public interest involved; the needs of the community; the benefits to the community; and how the needs and conveniences of the community outweigh the anti-competitive effects, if any, of the merger.

2. *Walter Norcross*, Treasurer, The Budd Company, Philadelphia, Pennsylvania, will testify concerning the following areas:

Sales, size and operation of his company; (i.e., greater competition among the larger Philadelphia banks and with out-of-state banks). Merger will be pro-competitive.

Advantages to the business community in the Philadelphia area, and increased lending limit.

How his company chooses a bank connection and what his company is likely to do should this merger be upheld.

Benefits from expanded services of the bank following merger.

His company's size and banking needs.

3. *B. F. Leiber*, Secretary-Treasurer, Food Fair Stores, will testify concerning the following areas:

Sales, size and operation of his company.

How and why a business chooses a specific bank.

His company size and banking needs.

Bank competition for his company's accounts.

What his company might do should this merger be upheld.

Needs of the Philadelphia community for larger institutions.

4. *Richard Bond*, President, John Wanamaker Stores, Inc., will testify concerning the following areas:

Sales, size and operation of his company.

How this merger will help the city and community of Philadelphia.

The merger will be pro-competitive.

Competition by and solicitation of New York banks.

5. *William B. Eagleson, Jr.*, Senior Vice-President, Girard Trust Bank, will testify concerning the following areas:

Merger will be pro-competitive.

Resultant bank able to give better and more services.

Girard and other banks compete with various other financial institutions.

Competition by and with Certificates of Deposits.

Competition from New York banks.

Merger complementary.

6. *Harvey Robbins*, Treasurer, Pennsylvania Fruit Company, Philadelphia, Pennsylvania, will testify concerning the following areas:

- Sales, size and operation of his company.
- Preference in bank connections, and reasons.
- Why a large bank benefits his company.
- Merger not harmful.
- Competition and solicitation by out-of-state banks.

7. *R. G. Dunlop*, President, Sun Oil Company, Philadelphia, Pennsylvania, will testify concerning the following areas:

- Sales, size and operation of his company.
- Pro-competitive merger.
- Competition and solicitation by out-of-state banks.
- Need for greater accumulation of capital and available bank resources.

Why large bank benefits his company and Philadelphia.

8. *W. Cooper Willits*, Vice-President and Treasurer, Pennsalt Chemical Corporation, Philadelphia, Pennsylvania, will testify concerning the following areas:

- Sales, size and operation of his company.
- Pro-competitive merger.
- Preference in bank connections and reasons.
- Better services will result.
- International Department important.
- Importance of large lending limits.
- Merger will benefit Philadelphia.

Philadelphia banks have not kept pace economically and with other banks.

9. *John Kerslake*, Vice-President and Treasurer, In Charge of Banking Relationships for Reading Company, Philadelphia, Pennsylvania, will testify concerning the following areas:

- Sales, size and operation of Reading Company.
- Reading's banking connections, its needs and reasons.

Resultant bank will give more and better services, including business advice.

Better able to serve small as well as large companies.

Strengthen Philadelphia banking structure and keep money in Philadelphia.

Competition and solicitation by out-of-state banks.

Pro-competitive merger.

10. *Victor Potamkin*, President (owner), Potamkin Chevrolet, Philadelphia, Pennsylvania, will testify concerning the following areas:

Sales, size and operation of his company.

Need for larger banks in Philadelphia.

His banking needs and benefits to him by merger.

Competition by banks and other financial institutions, especially as to floor planning.

Pro-competitive merger.

11. *Edward McGinley*, President, Beneficial Mutual Savings Bank, Philadelphia, Pennsylvania, will testify concerning the following areas:

Pro-competitive merger.

Competition with other financial institutions.

Competition of New York banks in Philadelphia area and nature of competition between New York and Philadelphia banks.

Merging banks complementary.

Resultant bank better able to give more and better services.

12. *E. Paul Oliphant*, President, Union Trust Company, Pottsville, Pennsylvania, will testify concerning the following areas:

Merger not harmful.

Competition of New York banks in Philadelphia area.

13. *George F. S. Elder*, Deputy Manager of Brown Brothers and Harriman, Philadelphia, Pennsylvania, will testify concerning the following areas:

Size and operation of company.

Pro-competitive merger.

Merger not harmful, merger beneficial.

Merging banks complementary.

Resultant bank better able to serve Philadelphia.

Merger will keep money in Philadelphia and attract business.

14. *Thacher W. Longstreth*, Chamber of Commerce for Greater Philadelphia, will testify concerning the following areas:

Pro-competitive merger.

Need larger banks to compete with New York banks.

Banks have not kept pace with growth rate.

Merger will help Philadelphia area.

Need larger banks to attract business—create jobs.

15. *Thorton Bradshaw*, Treasurer, Atlantic-Richfield Corporation, will testify concerning the following areas:

Sales, size and operation of company.

Need for larger banks in Philadelphia.

Need for larger lending limits and bank foreign departments in Philadelphia area.

Merger to benefit businesses in Philadelphia.

16. *Hubert P. Earle*, President, Pennsylvania Warehousing and Safe Deposit Company, Philadelphia, Pennsylvania, will testify concerning the following areas:

Size and operation of company.

Merger not harmful—no effect on his company.

Pro-competitive merger.

Merging banks complementary.

Benefits to community and small borrower which will result from merger.

Merger will keep money in Philadelphia.

17. *Oliver S. Twist*, Vice-President and Title Officer, Frankford Trust Company, will testify concerning the following areas:

Size and operation of bank.

Merger pro-competitive.

Competition with other financial institutions and certificate of deposit competition.

Merger not harmful but beneficial.

Community to be better served by merger.

18. *Hubert Horan, Jr.*, Chairman of Board, Continental Bank and Trust Company, will testify concerning the following areas:

Size and operation of Continental.

Merging banks complementary.

Merger pro-competitive.

Merger not harmful but beneficial.

Need for larger banks in Philadelphia area.

Competition from and by out-of-state banks.

19. *W. E. Müllestein*, Executive Vice-President Lukens Steel Company, Coatesville, Pennsylvania, will testify concerning the following areas:

Sales, size and operation of his company:

Pro-competitive merger.

Competition for business by and from out-of-state banks.

Merger will be beneficial to his company, especially growth of International Department, and business generally in the Philadelphia area.

Lukens banking connections and needs.

Merger will benefit the community.

Merger will stimulate business.

20. *Norman Denny*, President, Lincoln National Bank, will testify concerning the following areas:

Size, growth and operation of Lincoln National.

Merger complementary.

Merger pro-competitive.

Lincoln and other banks compete with various other financial institutions.

Merger not harmful but beneficial.

Competition from New York banks.

Merger will stimulate Philadelphia banking which has not been keeping pace or been aggressive.

Benefit community, especially higher lending limit.

21. *John J. McSorley*, Vice-President, Irving Trust Company, will testify concerning the following areas:

Size and operation of company.

Irving Trust and other New York banks compete in Philadelphia area.

Merger would create more competition for New York banks and among the larger Philadelphia banks.

Merger will decrease need to go to New York.

Businesses prefer to deal locally.

22. *Charles Becker*, Vice-President, Manufacturers-Hanover Trust Company, will testify concerning the following areas:

Size and operation of company.

Manufacturers-Hanover and other New York banks compete in Philadelphia area for deposits, savings and loans.

Merger will result in more competition for Manufacturers-Hanover, other out-of-state banks and the large Philadelphia banks.

Merger will result in greater competition for correspondent bank business.

23. *Bruce Brandt*, Assistant Vice-President, National Division, Chemical Bank New York Trust Company, will testify concerning the following areas:

Size and operation of company.

Chemical and other New York banks compete in Philadelphia area for national accounts and large local business.

Merger would create more competition for Chemical, other New York banks and the larger Philadelphia banks.

New York banks will lose business as a result of such merger and more money would stay in Philadelphia.

Resultant bank better able to compete nationally and for correspondent bank business.

24. *Wentworth Johnson*, President, Stetson Company, formerly an official of Fidelity-Philadelphia Trust Co., will testify concerning the following areas:

Sales, size and operation of company.

Pro-competitive merger.

Merger beneficial to both banks, and merger complementary re: Commercial departments, trust departments, staff, services and branch operations.

Larger banks will serve community better in many ways some of which are better services, keep money in Philadelphia, better trained personnel, better branching, larger lending limit, better services to business people, and better data processing services.

Competition with out-of-state banks.

Competition between banks and other financial institutions.

25. *W. Robert Davis*, President, Camden Trust Company, Camden, New Jersey, will testify concerning the following areas:

Size and operation of the company.

Competition of Camden Trust in Philadelphia and surrounding areas and of the Philadelphia banks in Camden and surrounding area.

26. *William H. Bell, Jr.*, First Camden National Bank & Trust Company, Camden, New Jersey, will testify concerning the following areas:

Size and operation of company.

Competition of First Camden in Philadelphia and surrounding area, and of the Philadelphia banks in Camden and the surrounding area.

27. *Frank Cisar*, Bureau of the Budget, Office of Statistical Standards, Washington, D. C., also Chairman of the Technical Committee On Area Definitions and Secretary of the

Federal Committee on Standard Metropolitan Statistical Areas, will testify concerning the following areas:

The acceptability and concept of the Standard Metropolitan Statistical Area as the market area to be used in the instant action.

28. *Walter F. Ryan*, Deputy Chief, Office of Statistical Standards, Bureau of the Budget, Washington, D. C., and Chairman of the Federal Committee on Standard Metropolitan Statistical Areas, will testify concerning the following areas:

The acceptability and concept of the Standard Metropolitan Statistical Area as the market area to be used in the instant action.

29. *Gustave G. Amsterdam*, Chairman of the Board of Bankers Securities Corporation, Philadelphia, Pennsylvania, will testify concerning the following areas:

Sales, size and operation of company.

Pro-competitive merger.

Resultant bank would have higher lending limit and be able to give better services, advice, etc., to businessmen.

Resultant bank would keep money in Philadelphia.

Resultant bank could do a better banking job and be beneficial to the community.

Bankers Security would rather do business locally, as would most businesses.

30. *G. Collingwood*, Treasurer, Air Products & Chemical, Inc., Allentown, Pennsylvania, will testify concerning the following areas:

Sales, size and operation of the company.

Pro-competitive merger.

Merger beneficial to both banks.

Merger complementary.

Merger would serve business and community better.

Air Products banking needs and how the merger will benefit his company, such as increase lending limit, better services, advice, etc.

31. *Nevins D. Baxter*, B.A., M.A., Ph.D., Assistant Professor of Finance, Wharton School, University of Pennsylvania, Consultant, Federal Reserve Bank of Philadelphia, Consultant, Mathematica, Princeton, New Jersey, and Regional Economic Consultant to Comptroller of the Currency, will testify concerning the following areas:

Acceptability and concept of the Standard Metropolitan Statistical Area (SMSA) as the market area applicable.

Advantages of another large billion dollar bank to the community and the banking industry.

Competition between banks in the Philadelphia area and benefits resulting therefrom.

Competition from New York banks and other out of state banks for national accounts, deposits, business of large concerns, large loans and for correspondent banks.

Competition between banks and other financial institutions, and the changing nature of commercial banking.

Dr. Baxter's testimony will be supported, in part, by statistical compilations, charts and graphs.

32. *Marshall Abrahamson*, Former Regional Comptroller of the Currency, Third National Bank Region, 925 Chestnut Street, Philadelphia, Pennsylvania, will testify concerning the following areas:

Duties and responsibilities of the Regional Comptroller of the Currency.

Pro-competitive effect of the merger.

Composition of the banks involved.

Complementary nature of the banks involved.

Benefits of the merger to the community, the public and the banks.

33. *T. M. Brezinski*, Director, Bank Organization Division, Comptroller of the Currency's Office, Washington, D. C., will testify concerning the following areas:

The number of applications for bank charters filed in the Philadelphia area since 1947 and the action taken and reasons therefor.

Criteria used in granting new bank charters.

34. R. Coleman Egerton, Regional Comptroller of the Currency, 925 Chestnut Street, Philadelphia, Pennsylvania, will testify concerning the following areas:

Requirements of chartering national banks.

Requirements of chartering state banks and the differences.

Number of banks in State.

Number of new charters.

Growth of banks and how new banks have prospered.

Possibilities of new entrants.

35. Paul F. Preston, Research Assistant, Department of Economic Research, Comptroller of the Currency's Office, Washington, D. C. will testify and introduce documents compiled by him or under his supervision concerning the following areas:

The concept and economic acceptability of the Standard Metropolitan Statistical Area (SMSA) as applied to the Philadelphia area.

Concentration locally, regionally and nationally; as it relates to labor force, population, sales, deposits, commercial banks, manufacturing and savings.

Competition between commercial banks and other financial institutions.

Respectfully submitted,

/s/ **PHILIP L. ROACHE, JR.**
Philip L. Roache, Jr.

/s/ **CHARLES H. McENERNEY, JR.**
Charles H. McEnerney, Jr.

/s/ **EUGENE METZGER**
Eugene Metzger

/s/ **GILBERT AMYOT**
Gilbert Amyot

Attorneys for the Comptroller
of the Currency

**OPINION AND ORDER OF DISTRICT COURT
DATED DECEMBER 29, 1966**

CLARY, Ch. J.

December 29, 1966.

This is an action by the United States Government, filed by the Department of Justice (hereinafter referred to as Justice), to enjoin a merger of the Provident National Bank and Central-Penn National Bank of Philadelphia. The complaint was filed on April 1, 1966, the banks answered on April 5, 1966, and the following day the Comptroller of the Currency intervened as a party. Motions to dismiss were filed by the defendants and intervenor, and on October 13, 1966 an Opinion was filed (Docket Paper #34), together with an Order denying the motions. The basis of the Opinion was that, although this action was solely within the ambit of the Bank Merger Act of 1966 (hereinafter referred to as BMA-66), under principles of notice pleading, it was not necessary to specifically plead the BMA-66. Thus, the complaint of Justice filed under Section 7 of the Clayton Act was held valid.

However, in *United States v. Mercantile Trust Company National Association, et al.*, Civil Action No. 65C 241 (1), (Eastern District of Missouri, Eastern Division, December 19, 1966), Chief Judge Roy Harper held, on pleadings which are completely similar to the instant case, the following:

“The complaint does not allege a monopoly, but alleges that the merger may substantially lessen competition and tend to create a monopoly in violation of Section 7 of the Clayton Act. Thus, the complaint only states part of a claim against the defendants required under BMA-66, in that it does not allege a monopoly, nor that the anticompetitive effects of the merger are not outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs

of the community. The plaintiff's complaint does not meet the absolute basic minimum standards of notice pleading, in that it has not alleged a violation of BMA-66, the act that applies to all bank mergers, nor has it alleged sufficient facts to support such violation."

Judge Harper dismissed the case with privilege to amend within twenty days. In the instant case, with the pleadings complete, the Government has taken an adamant position as hereinafter discussed.

After the Opinion of October 13, 1966 denying the motions to dismiss was filed, further pre-trial proceedings were had, and the Court ordered each side to submit an Identification of Witnesses, Summary of Evidence, and Statement of Position. This the Department of Justice did on November 30, 1966 (Docket Paper #44). In this document Justice stated unequivocally that it intended to prove a violation of Section 7 of the Clayton Act only, without any reference to BMA-66, contending that this was an action under Section 7, and that it was entitled to a determination of the issues on that sole basis. The ruling of this Court was exactly to the contrary.

The defendant banks, upon being served with plaintiff's Identification of Witnesses, Summary of Evidence, and Statement of Position on December 2, 1966, filed a Motion for Final Judgment (Docket Paper #45) with exhibits in support thereof. The Comptroller intervenor filed a Motion for Final Judgment (Docket Paper #46) on December 6, 1966. Thereafter, on December 12, 1966, a conference was held in chambers at which the subject was discussed in depth, a transcript of which hearing is part of the record of this case, and the Court took the matter under consideration. It is these two Motions for Final Judgment which are presently before the Court for disposition.

To date no one has denied the fact that Provident, in the four-county market area designated by the Opinion of the Supreme Court in *United States v. Philadelphia National*

Bank, 374 U. S. 371 (1963),¹ controls a definite percentage of the total assets, of the total loans, of the total IPC deposits, and of the total banking offices. Likewise, no one has denied that Central-Penn controls a definite percentage of the total assets; of the total loans, of the total IPC deposits, and of the total banking offices doing business in the four-county area. In other words, no one has denied that there will be a concentration of the total of these two percentages of the total assets, of the total loans, of total IPC deposits, and of the total banking offices in the four-county area in the new bank if merged as permitted by the Comptroller of the Currency. Justice says in its Statement of Position that it will prove this and no more. Paying lip service to the ruling of this Court of October 13, 1966, it contends that BMA-66 may have some relevancy, but that this Court is without power to consider in any way the finding of the Comptroller that this merger meets the specifications and qualifications of BMA-66.

This Court has thus been asked by the Government to rule that the banks and Comptroller must present evidence with respect to the merger *de novo* as if it were being done for the first time; come to its own conclusions independently of the Comptroller and "free of presumptions traceable to anyone"² in determining the validity of this merger. The expertise, know-how, direct findings, and conclusions of the Comptroller, the Government contends, are of absolutely no probative value in this Court. In other words, the Government contends that this Court must make an independent decision as to whether the public interest in the merger outweighs any anticompetitive effects. This contention, if considered again, would raise the constitutional question of separation of powers:

(1) Despite the finding of the District Court that the two banks involved in that case were realistically in competition with banks of other states, the Supreme Court limited its consideration of the case to a four-county area.

(2) Plaintiff's Pre-trial Brief (Docket Paper #16), page 28.

"If the function performed by an agency is 'administrative' or 'legislative' and if a federal court is required to do all over again what the agency has done, the system of review violates Article III of the Constitution." Davis, *Administrative Law Treatise*, 1958, Vol. 4, p. 180, §29.10.

See also the Opinion of Judge Pope in *United States v. Crocker Anglo National Bank, et al.*, Civil Action No. 41,808, (District of California, Southern Division, October 6, 1966).

The Court, therefore, finds that since Justice has definitely refused to try its case under BMA-66, the banks should not be subjected to the expense and inconvenience of a trial when Justice refuses to prove other than admitted facts to establish its case. Its position has been taken deliberately and directly in opposition to the ruling of the Court of October 13, 1966 and is consistent with the position of the Government on a nationwide basis, even though the Courts have been unanimous in refusing to accept its contention. *United States v. Mercantile Trust Company National Association, et al.*, No. 65C 241 (1), (District of Missouri, Eastern Division, December 19, 1966); *United States v. First City National Bank of Houston, et al.*, Civil Action No. 66-H-695, (Southern District of Texas, Houston Division, December 2, 1966); *United States v. First National Bank of Hawaii, et al.*, Civil Action No. 2540, (District of Hawaii, October 31, 1966); *United States v. Crocker Anglo National Bank, et al.*, Civil Action No. 41,808, *supra*.

At the hearing on December 12, 1966, Justice also took the position that if the Court should grant the motion of the defendant banks and the intervenor, the Court should, in the exercise of its discretion, continue the statutory stay automatically entered when this suit was filed, taking the position that it was the sole purpose of Congress to halt all mergers after suit was filed until there has been a final determination on the merits. In this instance, it is the Department of Justice alone which has refused to proceed with trial on the merits of the case under BMA-66. I can read

nowhere in the legislative history that it was the intention of the Congress of the United States to hold up mergers indefinitely pending determination of a Department of Justice theory. It appears throughout the legislative history that the Congress was concerned with the problems of divestiture as well as the tremendous expense to the applicant banks when mergers were unduly delayed, and that stay should be granted only when the Government, through the Department of Justice, in good faith proceeded promptly to a trial on the merits. This Justice refuses to do by its intransigent position of the applicability of Section 7 of the Clayton Act only. It is, therefore, the decision of this Court that it will not stay the merger, except for a relatively short time to permit Justice to take such further action as it sees fit. A time lag, even of the statutory time for appeal, at the present time, might destroy the efficacy of the merger because of mounting expense.

The Court, therefore, enters the following

ORDER

AND Now, to wit, this 29th day of December, 1966, upon consideration of defendant banks' Motion for Final Judgment (Docket Paper #45), Motion of Intervenor for Final Judgment (Docket Paper #46), the entire record of the case, including briefs, hearings and arguments, it is ORDERED, ADJUDGED AND DECREED:

1. That the complaint in this case be and it is hereby DISMISSED with prejudice;
2. That the statutory stay of the merger is LIFTED and the banks may merge at a time to be determined by them, but not earlier than January 18, 1967.

By THE COURT:

/s/ THOMAS J. CLARY

Ch. J.

**D. PROCEEDINGS IN SUPREME COURT ON
APPELLANT'S APPLICATION FOR STAY.**

**Memorandum of Defendant-Appellees in Opposition to
Plaintiff's Application for a Stay.**

1. INTRODUCTION.

This case is before the Court on an application for a stay filed by the Department of Justice, plaintiff below. The purpose of the application is to enjoin the merger of Provident National Bank and Central-Penn National Bank, defendants below. The plaintiff's action to enjoin the merger under the Clayton Act was dismissed with prejudice by the District Court for the Eastern District of Pennsylvania on December 29, 1966, toward the close of pretrial proceedings. The order of the District Court permits the Banks to merge on or after January 18, 1967. They propose to merge on January 20.

Fourteen months have passed since November of 1965, when the Banks announced their intention to merge. Plaintiff's motion faces them with the possibility of at least eighteen months¹ of additional delay. The Banks are opposing the motion for the basic reason that additional delay may destroy the merger, with serious consequences to the Banks and to their ability to compete with the larger banks in Philadelphia.

Plaintiff's application for stay states that the issues posed in this case are the same as those in *United States v. First National Bank of Houston, et al.*, No. 914. The application also implies that the procedures in the District Court were the same in the two cases. In fact, the issues are different and the procedure below was different, as the following history will show.

1. This would appear to be a minimum period, assuming that this Court disposes of plaintiff's appeal in the current term; that the case is then tried, with a final judgment by the District Court toward the end of this year; and that a second appeal to this Court may be disposed of, without the necessity of remand, before June of 1968.

2. HISTORY OF THE CASE.

1. On December 6, 1965 the Banks filed with the Comptroller of the Currency their application for approval of their proposed merger under Section 18(c) of the Federal Deposit Insurance Act, as amended by the Bank Merger Act of 1960.

2. On February 21, 1966 the Bank Merger Act of 1966 became effective. Among other things, it rewrote Section 18(c) of the Federal Deposit Insurance Act. It established new standards to be applied by the Comptroller in passing on merger applications and provided that in any judicial proceeding attacking a merger, the court should apply the identical standards which the Comptroller was directed to apply. The text of the Act is set forth in Appendix 1 filed with this memorandum.

3. On March 31, 1966 the Comptroller issued his decision approving the merger. He found that the competition which would be eliminated by the merger is miniscule. He further found that "the climate of competition would be stimulated by the increased capacity of a large scale bank, and the range of choices available to customers who require services which can only be rendered by a large bank would be increased"; that "the increased lending capacity of the resulting bank will benefit large banking customers through the creation of an additional source of very large loans"; that "with its greater financial resources and larger operations to assume acquisition and start-up costs, the resulting bank will be better able to provide the public with the latest advances in data processing services"; that "an adequate number of alternative sources of financial services exist in the Philadelphia area"; that "competition among the large financial institutions will be stimulated"; and that "the increased ability of the resulting bank to serve the convenience and needs of the Philadelphia area by increased efficiency, by a greater lending

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capacity, through more adequate banking quarters, and by a generally improved quality of banking services makes this merger desirable."

The Comptroller concluded that: "We would be hindering the economic growth of Philadelphia if we failed to give our approval to this merger application."

4. On April 1, 1966, the Department of Justice filed its complaint, seeking an injunction under the Clayton Act. The Comptroller intervened to defend his decision as provided by the Bank Merger Act of 1966.

5. On June 7, 1966, the District Court issued Pretrial Order No. 1, providing that:

(a) The plaintiff was to file its pretrial brief setting forth the plaintiff's views on the legal issues, its contentions as to burden of proof on these issues, and the facts which it expected to prove in support of its claim.

(b) The defendants were then to file their pretrial brief setting forth their answering contentions and the facts which they expected to prove in defense.

(c) Finally, the plaintiff was to file its reply brief setting forth its contentions and the facts, if any, which plaintiff expected to prove "in rebutting any affirmative matter raised by defendants."

Any issues, contentions or claims not set forth in the pretrial briefs were to be deemed "abandoned, uncontroverted or withdrawn." A copy of Pretrial Order No. 1 appears in Appendix 1 filed concurrently herewith.

6. In response to Pretrial Order No. 1, the parties filed their briefs.

(a) Plaintiff's pretrial brief outlined a statistical case under Section 7 of the Clayton Act. It alleged a trend toward concentration, the merger of the fifth and

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sixth² largest banks to form the fourth largest with 14% of total assets, loans and deposits and 15% of banking offices of the 36 banks doing business in the Philadelphia four-county area. In the plaintiff's view, this case "is *United States v. Philadelphia National* all over again, only that the names have been changed."

(b) Defendant Banks' pretrial brief took direct issue with the plaintiff's Clayton Act case. It pointed out that this case is not "*Philadelphia National* all over again" because the merger will produce the fourth bank, not the first, with less than half the market share which this Court held to be an undue percentage in *Philadelphia National*, and because the increase in concentration here is less than one-third the increase involved in that case. The Banks further contended that their competition in the national wholesale banking market is insignificant in relation to the size of that market; that they are not in substantial competition in the retail market because their branch systems serve different localities within the Philadelphia four-county area; that the merger will have no adverse effect on competition in the field of trusts, where Provident is and will remain the fourth largest bank and Central-Penn is less than one-tenth the size of Provident; and that the fields of specialty of the two Banks are likewise complementary rather than competitive. Finally, the brief set forth the facts the Banks will prove to show that the merger is in the public interest; namely, that the merger will solve very substantial competitive problems confronting Central-Penn in its competition with the largest banks in the City, which are more than four times its size; that it will produce operating economies in excess of \$1.25 million annually; that it

2. Actually, even on the basis of plaintiff's figures as of 1965, Central-Penn appeared to be the seventh largest bank, not the sixth. There is no doubt that it had declined to seventh place at the end of 1966.

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will also produce a better quality of banking services and enhanced competition with the four largest banks in Philadelphia; and that it will assist in the development of the Port of Philadelphia and the revitalization of Philadelphia's economy.³

(c) Plaintiff's reply brief was required to set forth its reply to the affirmative contentions of the Banks; i.e., the Banks' contentions as to the public interest in the merger and its effect in meeting the convenience and needs of the community to be served. With respect to these contentions, the reply brief said that plaintiff "is not in a position to inform this Court whether plaintiff believes the conclusions reached [in the Banks' brief] are correct or not." In plain words, plaintiff could not set forth a case on community convenience and need even by way of rebuttal.

The plaintiff's pretrial brief and reply brief are contained in Appendix 2. The Banks' pretrial brief is in Appendix 3. Together they present a complete résumé of the factual contentions of the parties. No such pretrial record was made in the *Houston* case.

7. On August 5, 1966 the Comptroller filed a motion to dismiss the complaint like the motion he filed in the *Houston* case. The Banks filed a similar motion on August 22. On October 13 the District Court entered an Opinion and Order denying the motions to dismiss on the ground that, while the action would be governed by the Bank Merger Act, the complaint under the Clayton Act was sufficient to inform the defendants of the claim against them. A copy of this opinion is contained in Appendix 1. The holding of the District Court as to the sufficiency of the complaint

3. The brief also showed that the plaintiff's statistics as to market shares and concentration are meaningless because they fail to distinguish between wholesale and retail markets and do not take into account the competition within the four-county area from banks outside the area, the competition from other financial institutions, and the complementary character of Provident and Central-Penn.

in this case is precisely opposite to the holding in the *Houston* case. *Houston* is before this Court on a preliminary issue of pleading. This case has progressed through the pretrial stage and the District Court's judgment here is in the nature of a directed verdict.

8. On October 26, 1966 the District Court set down for argument on November 4 the questions of burden of proof and the weight to be given to the Comptroller's decision. On November 4, having received briefs from the Banks and the Comptroller and heard argument by the plaintiff, the Court delivered its opinion stating that the proceedings would take the form of a review de novo similar to those described in *First National Bank of Smithfield, North Carolina v. Saxon*, 352 F. 2d 267, 271 (4th Cir. 1965); that the Court would hear all evidence in law and in fact, and if it then appeared that the Comptroller's decision was dependent on the exercise of discretion, the Court would bow to that discretion; and that, if the Comptroller appeared to have abused, exceeded or arbitrarily applied his discretion, the Court would set aside his approval. The Court further ruled that the Department of Justice, in order to make out a prima facie case, must establish that there are anticompetitive effects as defined in the Bank Merger Act and that these are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. A copy of this opinion is contained in Appendix 1. There was, of course, no such opinion in *Houston*.

9. After the Court's order of November 4, plaintiff filed a summary of evidence and statement of position stating that it did not intend to offer proof either of the existence or the significance of convenience and needs factors. Defendants then moved for final judgment under Rule 41(b)—i.e., a judgment such as would be entered upon motion for dismissal after completion of the plaintiff's case if the plaintiff failed to make out a prima facie case.

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On December 29, 1966, the District Court entered the judgment which the defendants requested. A copy of the District Court's order of December 29 is contained in Appendix 1. The outlines of testimony filed by plaintiff, the Banks and the Comptroller are contained in Appendix 4. There were, of course, no such documents in *Houston*.

3. THE QUESTION PRESENTED.

The question presented is whether the merger should be stayed pending appeal after the District Court has dismissed the action with prejudice. Such a stay has already been passed upon by the District Court. At a pretrial conference on December 12, counsel for the plaintiff asked the Court to exercise its discretion by granting a stay pending appeal on the ground that if the merger were permitted and the plaintiff was ultimately successful, the merger could not be "unscrambled." The Court, in its order of December 29, rejected the request for a stay, saying:

"At the hearing on December 12, 1966, Justice also took the position that if the Court should grant the motion of the defendant banks and the intervenor, the Court should, in the exercise of its discretion, continue the statutory stay automatically entered when this suit was filed, taking the position that it was the sole purpose of Congress to halt all mergers after the suit was filed until there has been a final determination on the merits. In this instance, it is the Department of Justice alone which has refused to proceed with trial on the merits of the case under BMA-66. I can read nowhere in the legislative history that it was the intention of the Congress of the United States to hold up mergers indefinitely pending determination of a Department of Justice theory. It appears throughout the legislative history that the Congress was concerned with the problems of divestiture as well as the tremendous expense to the applicant banks when mergers were unduly delayed, and that stay should be granted

only when the Government, through the Department of Justice, in good faith proceeded promptly to a trial on the merits. This Justice refuses to do by its intransigent position of the applicability of Section 7 of the Clayton Act only. It is, therefore, the decision of this Court that it will not stay the merger, except for a relatively short time to permit Justice to take such further action as it sees fit. A time lag, even of the statutory time for appeal, at the present time, might destroy the efficacy of the merger because of mounting expense."

Where a lower court, fully familiar with the facts, has exercised its discretion to deny a stay, this Court requires an "extraordinary showing" before it will grant a stay. *Magnum Co. v. Coty*, 262 U. S. 159, 164 (1922). In that case, Chief Justice Taft stated that, even where this Court has granted plenary review by certiorari, "it requires a clear case and a decided balance of convenience before it will grant such a stay." As stated by Mr. Justice Brennan in *Organized Village of Kake v. Egan*, 4 L. Ed. 2d 34, 39 (1959):

"I recognize that ordinarily a single Justice should exercise great caution in granting a restraining order. I am especially hesitant to grant the relief requested in this case since the District Court refused the relief . . ."

Under the *Magnum* and *Kake* cases, the plaintiff's application for stay should be denied unless the plaintiff can convince this Court that the Banks' fears as to the consequences of the stay are groundless and that there is good ground for the plaintiff's fears as to the impossibility of effective relief after the merger has been effectuated. Plaintiff has advanced nothing to convince the Court on either point except the general arguments as to the difficulty of divestiture which were heard and rejected by the District Court.

4. ARGUMENT.

The Stay May Frustrate the Merger, With Adverse Consequences to the Banks and to Competition.

The Department of Justice assumes that the stay will merely preserve the status quo and implies that this cannot harm the Banks. This is not so. Even if the injunction did no more than keep the Banks in status quo—which is not the case—it does not preserve the status quo of their competitors. The competitive position of the two Banks has deteriorated substantially during the fourteen months since their merger was announced. This adverse effect has been more pronounced on Central-Penn (the smaller of the two banks), with the result that Central-Penn has fallen behind Provident and both of them have fallen behind their larger competitors. The affidavit of the Banks' Presidents attached as Exhibit A hereto shows that this tendency will be accentuated if the stay continues.

The statistics included with the Bank Presidents' affidavit show that during the year 1966, while the stay was in effect, the Banks lagged behind their larger competitors in deposits and earnings. The four largest Philadelphia banks' earnings grew nearly ten times as much as Central-Penn's, the two largest Montgomery County banks' earnings grew more than twelve times as much. During a year when Central-Penn's branch system remained unchanged and Provident's increased by only three (counting branches opened and applied for), the four largest Philadelphia banks opened or applied for a total of 32 branches, and the two largest Montgomery County banks opened, acquired or applied for a total of 10.

More serious problems loom in the future. Central-Penn will have four vacancies in its board of directors at the 1967 annual meeting and fourteen at the 1968 meeting. Provident will have five vacancies in 1967 and six in 1968. The caliber of its board of directors is vitally important to

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a bank which, like Provident and Central-Penn, does a substantial wholesale business with large customers who give great weight to this factor. It is virtually impossible for the Banks to fill these vacancies with the caliber of person necessary to maintain their competitive position.

The Banks also foresee problems in retaining key personnel and attracting replacements. Since the announcement of the merger, Central-Penn has lost five key men from its small trust department. While four have been replaced, after delay and difficulty, the replacement of further losses may prove impossible. The effects of the stay are manifest in a substantial decline in trust department income.

As shown by the Presidents' affidavit, the Banks do not claim that either of them is in danger of failure. They contend, rather, that if the stay of their merger is continued for another year or two, there is a substantial chance that:

(a) Central-Penn's earnings, assets and branches may continue to lag behind Provident's to such an extent that Central-Penn could no longer expect Provident to go through with the merger; and

(b) Central-Penn might then have to give consideration to the alternative of relinquishing its status as a reserve city bank, converting itself to a state bank, moving its head office out of the City, and resigning from the Federal Reserve System. Even though such a move would mean the loss of most of Central-Penn's wholesale banking business, the competitive pressures inherent in its present status might make the change the lesser of two evils.⁴ In such event, the wholesale banking business lost by Central-Penn would doubtless move to the two or three largest banks in Philadelphia, thus increasing their present lead over Provident and the

4. By changing from a reserve city Federal Reserve member bank to a non-member country bank, Central-Penn would reduce its reserve requirements on demand deposits by 27% and would also be permitted to invest 40% of its reserves in interest bearing securities, thus increasing its income by several hundred thousand dollars a year.

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other smaller banks. By contrast, permitting the merger would transfer most of this business to Provident and narrow the gap between it and its larger competitors.

The Bank Presidents' affidavit shows that stay will hurt the business of both Banks. It will increase the competitive advantages of the very much larger banks in Philadelphia. It may destroy the merger. And it may force Central-Penn to become a non-member country bank, a change which will not serve the interests of the Department of Justice or the public. In short, the stay will unquestionably hurt the competitive situation in Philadelphia and may hurt it to the point where even an ultimate victory by the Department of Justice would be a Pyrrhic one.

Effective Relief Will Be Available After the Merger.

The Department of Justice does not claim that permitting the merger pending appeal will do permanent injury to banking competition in Philadelphia. There is no contention that the merged bank will have a monopoly in any banking service or will be the largest in any field. There is no charge of predatory practice. The Department's argument is solely that the stay is necessary to preserve the possibility of effective relief if the Department is ultimately successful.

The following section of this memorandum will show that there is, in fact, little chance that the Department will ultimately prevail. In this section it is assumed, for the sake of argument, that the merger is effectuated now—and that eighteen months or two years from now the Court renders a final judgment to the effect that the merger was in violation of the Bank Merger Act. The question then is, what relief will be available?

The Banks do not take issue with the Department as to the futility of any effort at de-merging the Banks two years hence. As shown by their affidavit, the Bank Presi-

dents agree that no one can reconstitute the three essential parts of a bank—its board of directors, its operating personnel, and its customers. However, this does not mean that no effective relief is available—in the factual circumstances involved in this case. The Bank Presidents' affidavit shows that this could be done by a sale of assets.

Central-Penn's business is divided almost evenly between wholesale banking (correspondent banks and large corporations, financial institutions and others in the \$100,000 and over class) and retail banking (individuals and smaller local businesses). Wholesale banking is not an issue in this suit. The Department is not concerned with those who do their banking in the national market. The Department's concern is with those who are practically confined to local banking offices, i.e., retail banking.

With respect to retail banking, the Banks will make a strong showing that their branch systems are complementary and not competitive. Assuming, however, that the Department's views prevail and the merger is found to have anticompetitive effects in retail banking, then any relief would be aimed at increasing competition in that field.

Competition in retail banking centers around branch offices, since each office has a service area limited by traveling convenience. A bank's ability to compete in any locality is dependent on the ownership of a branch or branches in that locality. And branches can be sold.⁵ Thus the merged bank could affect the retail competition in any locality in the four-county area where it had a branch by selling that branch to a bank not already competing in the locality. The Presidents' affidavit shows that there are, in fact, a number of substantial banks that do not now compete in various localities but might be interested in moving into

5. The proposed final judgment in *United States of America v. Manufacturers Hanover Trust Company*, United States District Court for the Southern District of New York, Civil No. 61 C 3194, which was agreed to by the Department of Justice, would have required the merged bank to sell 46 branches to a bank not disapproved of by plaintiff.

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those localities by purchasing branches from the merged bank.⁶

Again in this respect it should be noted that this case is different from *Houston*. Texas is a unit banking state which does not permit branches. Therefore, in *Houston* branch competition is not involved and there are no branches to sell.

There Is Little Chance That Plaintiff Will Prevail.

Plaintiff has based its position in this case on the legal argument that, under the Bank Merger Act of 1966, the Department of Justice is not required to show that the Comptroller acted arbitrarily or abused his discretion when he approved the merger. The District Court, like every other Court which has considered the question,⁷ ruled against the plaintiff's contention. It held that under the Bank Merger Act the function of the District Court is to review the Comptroller's decision and that the contrary view advanced by the Department of Justice would violate the Constitutional separation of powers.

Later in this section we will show that the District Court's ruling on the legal question is correct. However, the Banks' position with regard to the final outcome of the case does not depend on the disposition of the legal issue as to the meaning of the Bank Merger Act of 1966.

The Banks confidently expect to win on the legal issue

6. Additionally, it would be possible for the merged bank to sell its very substantial business in financing automobile purchases through local dealers, thus affecting the competitive situation in this field.

7. *United States v. Crocker-Anglo National Bank*, 1966 Trade Reg. Rep. ¶ 71,898 (D. C. Cal.); *United States v. Third National Bank of Nashville*, 1966 Trade Reg. Rep. ¶ 71,934 (M. D. Tenn.). See also, *United States v. First National Bank of Hawaii*, Civ. No. 2540, D. Hawaii, 1966 (oral opinion of October 31, 1966, unreported); *United States v. First City National Bank of Houston*, Civ. No. 66-H-695, S. D. Tex. (oral opinion of December 2, 1966, unreported), Notice of Appeal filed December 21, 1966; *United States v. Mercantile Trust Co.*, 1966 Trade Reg. Rep. ¶ ———, (E. D. Mo., December 19, 1966).

—in which event the case will be over. But if the legal issue is decided against the Banks and the case is remanded for trial on the basis of the plaintiff's interpretation of the Bank Merger Act, the Banks expect to win on the facts.

This expectation is grounded on the extensive pretrial record in this case, which is contained in the Appendices to this memorandum and outlined above under "History of the Case."

For all practical purposes, this case was pre-tried under the interpretation of the Bank Merger Act now advanced by the Department of Justice. Under Pretrial Order No. 1, plaintiff was free to treat the issues of public interest and convenience and needs according to its view that they are affirmative defenses, to be raised by the Banks. But when the Banks did raise these issues in their pretrial brief, plaintiff made no rebuttal.

Under the final directive of Pretrial Order No. 1, plaintiff has abandoned or withdrawn any contention as to the effects of the merger in meeting community convenience and need, and the Banks' contentions on this issue stand uncontroverted.⁸

Even if Pretrial Order No. 1 is disregarded, it is clear that plaintiff has no case on community convenience and need. The Department of Justice has repeatedly claimed that the Banks are in a better position than the Department to produce evidence on this issue and that the Department should not be required to imagine ways in which a merger might benefit the community. The obvious inference is that when the Banks have produced their evidence, the Department will do likewise. In this case, the Banks' pretrial brief described their evidence on community benefits in thirteen detailed categories. The Department's failure to

8. On November 4 plaintiff was ordered to produce its evidence on convenience and needs, which it declined to do. At the hearing on December 12, the Court reminded the plaintiff that pretrial orders defining the issues are binding on both sides. Counsel for the plaintiff agreed that this was so and again declined to comply with the order of November 4.

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reply permits only one conclusion—the Department has no evidence to produce.

The pretrial proceedings show that the most the plaintiff could hope for is to sustain the burden of proof of anticompetitive effects. The Banks will clearly sustain any burden which may be placed upon them as to convenience and needs. However, the ultimate issue in the case is not anticompetitive effects or community convenience and needs; it is whether the merger is in the public interest when these two factors are weighed against one another. The Bank Merger Act permits a merger which would violate the Clayton Act, if such a merger is found to be in the public interest. "The ultimate question [is] whether the merger would be consistent with the public interest despite the foreseeable injury to competition," *Seaboard Airline Railroad Company v. U. S.*, 382 U. S. 154, 156.

Under the plaintiff's view of the law, the District Court would be required to decide this ultimate question of public interest, "independently of the Comptroller and free of presumptions traceable to anyone." But questions of public interest are administrative, not judicial. This was established in *Federal Radio Commission v. General Electric Co.*, 281 U. S. 464 (1930), and *Federal Radio Commission v. Nelson Brothers Bond and Mortgage Co.*, 289 U. S. 266 (1933). The interpretation of the Bank Merger Act urged by the Department of Justice would violate the Constitutional separation of powers. The three-judge District Court so held in the San Francisco bank merger case where Judge Pope said "the problem of reviewing the second determination by the Comptroller, namely, whether the proposed transaction is outweighed in the public interest, and whether it meets the convenience and needs of the community is plainly and unquestionably a legislative or administrative determination of a type which this court, as a constitutional court, is prohibited from deciding." 1966 Trade Reg. Rep. ¶ 71,898, page 83,154. Judge Clary made the same ruling in his December 29 opinion, saying

that "the Government contends that this Court must make an independent decision as to whether the public interest in the merger outweighs any competitive effects. This contention, if considered again, would raise constitutional question of separation of powers."

The District Courts, in rejecting the plaintiff's interpretation of the Bank Merger Act, were following *Philadelphia National*, where this Court said that:

"A value choice of such magnitude is beyond the ordinary limits of judicial competence . . ." (374 U. S. 371)

In view of the Constitutional mandate, there can be little doubt that the District Court's interpretation of the Bank Merger Act is correct, in which event the case will be over. But even if this Court reverses the District Court on the interpretation of the law, there can be little doubt that the Banks will ultimately prevail on the facts.

5. PROCEDURE ON APPEAL.

The application for stay proposes an accelerated briefing schedule on appeal so that this case may be argued with the *Houston* case. If the stay is granted, the Banks will accede to the proposed schedule. If the stay is denied and the Banks are permitted to merge, there would be no necessity for acceleration.

6. CONCLUSION.

It is submitted that in balancing the equities, great weight should be given to the Banks' contentions because they are based on the banking facts and the opinions of experienced bankers set forth in the affidavit of the Banks' Presidents. The Department of Justice, by contrast, has not offered any facts or expert opinions. It relies on naked argument.

It is uncontroverted that the merger will serve the convenience and needs of the Philadelphia community, in-

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crease competition with the larger banks, and improve the efficiency of the merged bank and the quality of its banking services. Any anticompetitive effects in retail banking can be remedied by a sale of branches.

Wherefore, it is submitted that the merger should not be stayed longer and the Department's application should be denied.

Respectfully submitted,

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RICHARD C. BULL,
CHARLES I. THOMPSON, JR.,
TYSON W. COUGHLIN,
MATTHEW M. STRICKLER,
Attorneys for Defendant-Appellees.

Of Counsel,

BALLARD, SPAHR, ANDREWS & INGERSOLL,
WHITE & WILLIAMS.

Dated: January 11, 1967.

EXHIBIT A.

IN THE
SUPREME COURT OF THE UNITED STATES.

October Term 1966.

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

PROVIDENT NATIONAL BANK AND CENTRAL-PENN
NATIONAL BANK OF PHILADELPHIA,
Defendant-Appellees,

AND

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY,
Intervenor-Appellee.

AFFIDAVIT IN SUPPORT OF BANK'S MEMORANDUM
OPPOSING APPLICATION FOR STAY.

COUNTY OF PHILADELPHIA
COMMONWEALTH OF PENNSYLVANIA } ss.:

WILLIAM G. FOULKE, President of Provident National Bank and prospective Chairman of the merged bank, and HAROLD F. STILL, JR., President of Central-Penn National Bank and prospective President of the merged bank, being duly sworn, depose and say that this affidavit is made in support of the 'defendant Banks' memorandum opposing the Application for Stay filed by the Department of Justice; and that:

A. Effects of the Stay Sought by the Department of Justice.

1. On November 10, 1965, Provident National Bank and Central-Penn National Bank announced their intention to merge. From then until April 1, 1966, the merger was delayed pending approval by the Comptroller of the Currency and the expiration of the 30-day period for filing suit under the Bank Merger Act of 1966. On April 1, 1966 the Department of Justice filed suit to enjoin the merger. Such action resulted in an automatic stay under the Bank Merger Act, which stay has continued until the present. Thus, the Banks have been subjected to a stay of their merger for more than a year, despite the fact that on March 4, 1966, the merger was approved by the Comptroller of the Currency.

2. As will be demonstrated in more detail below, the year of operation under stay has adversely affected the business of both Banks. The adverse effect has been more pronounced in the case of Central-Penn and has aggravated its problems in competing with the larger reserve city banks in Philadelphia. An additional eighteen months of operation under stay will cause further harm to Central-Penn's business, and might affect it to such an extent that the merger terms arrived at in 1965 would no longer be equitable to the Provident stockholders. Thus, it can fairly be said that the stay sought by the Department of Justice might destroy the merger, even if the Banks ultimately prevail in the litigation.

3. We are aware that the purpose of the stay sought by the Department of Justice is to preserve the competitive status quo in case the Department ultimately prevails in the litigation. The results of the past year of operation under the stay show that this is not possible. In that period Provident has lost ground to its larger competitors and Central-Penn has lost considerably more. Continued operation under stay can be expected to accentuate this trend.

The larger banks in the City can be expected to move even further ahead of Provident and Central-Penn, in which event the stay, instead of preserving the competitive status quo, would contribute to its deterioration.

4. During the past year, the directors and officers of the Banks have operated in a state of uncertainty as to whether they would be permitted to merge or would be required to continue as separate institutions. This has necessitated postponement of decisions and commitments and has retarded the development of the Banks. Specifically:

(a) Both Banks have avoided substantial commitments to change procedures, acquire equipment, or hire personnel which would be duplicative after the merger. As a result, they have lost the momentum and aggressiveness necessary for growth and development.

(b) Central-Penn has deferred for the duration of the litigation the raising of additional capital, which was under active consideration when the merger was announced and would doubtless have been effected by now if the money market had permitted.

(c) While continuing to computerize its operations and develop new electronic data processing services, Central-Penn has postponed the major effort which it would have to make in this field. The reasons for the postponement are: first, the possibility that new equipment and programs will become duplicative after the merger; and second, the problems involved in the commitment of necessary capital and personnel. With bank profit margins narrowing, it is essential to computerize as many operations as possible. Central-Penn has been slow in this regard and must make the necessary decisions in the very near future.

(d) Central-Penn has filed no applications for additional branches to fill the serious gaps in its pres-

ent branch system, the reasons being its desire to avoid a further drain on earnings and perhaps capital and the uncertainty as to whether the gaps would be filled by the merger with Provident. Provident opened two new branches in 1966 and has an application for a third branch approved and awaiting zoning action. This branching activity on the part of Provident was less than that of the larger banks. At the same time, it was more than Central-Penn's and thus widened the gap between the Provident and Central-Penn branch systems, which in turn may ultimately affect the fairness of the merger terms.

(e) Central-Penn has taken no steps to enlarge its international department, since this need will be largely filled by the merger.

(f) Both Banks have put aside any consideration of mergers with any of the numerous small banks in the area, even where such mergers would seem to have no anticompetitive effect. In the meanwhile, one substantial competitor has been permitted to acquire three offices and nearly \$30 million of resources by merger.

5. The uncertainty has hindered the Banks in retaining and attracting personnel. Since the announcement of the merger, Central-Penn has lost three of the ten officers and two other key personnel in its trust department including the department head, the only experienced tax man and the only two estate planners. While all but one have been replaced, the difficulty and delay in finding replacements adversely affected trust business. Gross income from this business was substantially lower in 1966 than in 1965. The situation is still unsettled, and the difficulty experienced in recruiting replacements shows that any future vacancies in this department or in any other department will be almost impossible to fill with qualified personnel. The difficulty in recruiting personnel above the junior officer level extends to other departments in

both Banks. Candidates cannot be expected to take a position with an employer who cannot predict how long the position will last or what will become of its occupant when it is ended. Thus the Banks are virtually precluded from obtaining new top officers to initiate new services or operations.

6. The Banks are experiencing similar problems in obtaining directors. There are at present three vacancies on the Central-Penn board and one vacancy on the Provident board. Central-Penn will have a fourth vacancy and Provident five vacancies at their 1967 annual meetings. Central-Penn is scheduled to replace ten directors at the 1968 annual meeting and Provident one. It is very difficult for either Bank, particularly Central-Penn, to recruit replacements when the Bank cannot tell the prospective director how long he will serve or whether he will serve with a merged or a separate institution. The strength of its board of directors is vitally important to a bank, particularly one which, like Provident or Central-Penn, does a substantial wholesale business. The larger corporate and financial customers give great weight to this factor in choosing banking connections. The growing number of vacancies in the Banks' boards will handicap them in their efforts to attract new customers of this kind. Because of the larger number of vacancies among its directors, Central-Penn can be expected to experience greater difficulty in this regard, and this, too, may ultimately threaten the fairness of the merger terms.

7. The combination of factors described in the preceding paragraphs has forced the Banks (and particularly Central-Penn) to "mark time" until the merger is completed. During the tight money market which prevailed in 1966, it was possible for the Banks to do this without substantial ill effect except a decline in their deposits and earnings as compared with their larger competitors. At

such time as the money market eases, the adverse effect of marking time will become more pronounced and the competitive position of the Banks will deteriorate.

8. The problem of inadequate space for Central-Penn's operating departments—which would be solved by the merger—became so pressing during 1966 that, after months of delay, a decision was made to rent additional space and proceed with costly renovations. These expenditures may well prove wasteful if the merger is consummated and, at the same time, do not represent the best solution if the merger is enjoined.

9. The overall effect of the factors described above is reflected in the adverse results of the Banks' operations during the past 12 months as compared with their competitors. Specifically:

(a) Both Banks' deposit growth was small in comparison with their competitors. For the year 1966, Central-Penn's growth in deposits was the lowest and Provident's the second lowest of the six reserve city banks in Philadelphia. Their combined growth was less than one-half the average for the four other city banks and less than one-third of the average for the two large Montgomery County banks (See Schedule A).

(b) Both Banks lagged in earnings. Central-Penn's net operating earnings after taxes for 1966 exceeded the corresponding figure for 1965 by 1.2%, whereas the average improvement in earnings for the four leading banks in Philadelphia was 11.9% and for the two leading banks in Montgomery County was 15.9%. Provident's earnings increased substantially more than Central-Penn's, but less than the average, another indication that the merger terms cannot be maintained indefinitely (See Schedule A).

(c) Both Banks lagged behind their competitors in branching. Provident opened two branches and

applied for a third, and Central-Penn's branch system remained unchanged; whereas their principal competitors have expanded or are in the process of expanding their systems to a very substantial degree by branching and merger (See Schedule B).

(d) Stock prices for both Banks were lower than for their competitors, whether measured in relation to book value or earnings (See Schedule C).

(e) The correspondent bank balances of both Banks have declined, while at the same time the balances of Philadelphia National Bank, the leader in the City, have increased. In national ranking, Provident has fallen from 67th place to 85th place and Central-Penn has fallen from 123rd place to 145th place (See Schedule D).

In summary, the period of litigation to date has proved burdensome to both Banks. While other large banks in the City have moved forward with such new developments as credit cards, it has been virtually impossible for the defendant Banks to make any decisions with long range implications. Future planning, an essential to any well run bank, has been neglected because of the uncertainty surrounding the situation, and because of the demands of the merger litigation on the time and energies of top management.

10. We have considered what may happen if the present state of uncertainty continues for another eighteen months or more. In our opinion, as indicated above, there is a very real possibility that the business of the two Banks may change so drastically in relation to each other that the merger terms will no longer be fair and equitable and the merger will fail. Such a failure must be considered permanent. Experience has shown that it is virtually impossible to renegotiate the terms of a merger between sub-

stantial corporations once the merger has been frustrated for any reason.

11. If the merger fails, Central-Penn might have to give consideration to the alternative of relinquishing its status as a reserve city bank, converting itself to a state bank, moving its headquarters outside Philadelphia (probably to Montgomery County), and resigning from the Federal Reserve System. Even though such a move would mean the loss of much of Central-Penn's wholesale business, it would have compensating features in that (a) as a country bank, Central-Penn would be required to maintain only 12% reserves against demand deposits, as compared with the 16½% reserves required of reserve city banks; and (b) as a non-member bank, Central-Penn could invest 40% of its reserves in interest bearing securities, whereas a member bank must maintain its reserves with the Federal Reserve System, where they produce no income. These changes would mean substantially more income from any given level of deposits. In addition, as a Montgomery County bank, Central-Penn could branch into three additional counties as well as the four counties where it is permitted to branch today.

12. If Central-Penn were to relinquish its status as a reserve city bank, a very large part of its wholesale banking business (business with correspondent banks, large corporations, financial institutions and others in the national market) could be expected to move to the very largest banks in Philadelphia rather than to Provident (the fifth largest bank), as would be the case if the merger is permitted. Thus Central-Penn's election to change its status would tend to increase the concentration of wholesale business in Philadelphia among the top two or three institutions. Moreover, the removal of a substantial bank from the City and from the Federal Reserve System could be expected to have an adverse effect on the Philadelphia financial community and the City's economy.

B. Availability of Relief If Department of Justice Prevails.

13. We understand that the Department of Justice has argued that, if the Banks are permitted to merge at this time and the Department ultimately prevails in the litigation, no effective relief will be available to the Department. We further understand that, in order to be effective, any relief would have to give promise of compensating for the elimination of Central-Penn as a separate institution. The following paragraphs of this affidavit will demonstrate that, insofar as it is possible to foresee conditions two or more years hence, relief will be available by way of sale of assets.

14. We concur in the view, which we understand has been advanced by the Department of Justice; namely, that after the merger has been effectuated it will not be possible to recreate Central-Penn. Specifically, no one could reconstitute the Central-Penn board of directors, personnel, depositors, and trust business. While in theory it might be possible to create a new bank of approximately the size of the present Central-Penn, the practical difficulties of obtaining directors, personnel and customers for such a new bank make this possibility a remote one. In short, we recognize that the merger will eliminate one corporate entity, but we do not believe that there need be any corresponding lessening in competition. On the contrary, to the best of our knowledge, leading bankers are unanimous in believing that the merger will stimulate competition among the larger banks in the four-county area.

15. An obvious way to restore any competition that may be lost through the merger of Provident and Central-Penn (assuming that the merger is ultimately held to be illegal) is for the merged bank to sell assets to one or more of the remaining banks which are now competing or can potentially compete in the Philadelphia four-county area. For example:

Exhibit A to Memorandum

(a) There are large banks in Montgomery County which have virtually no branches in Bucks County. If the merged bank were to sell some of its Bucks County branches to one of them, a new competitive force would be created in that county.

(b) There is one substantial bank in Delaware County which might well consider expanding into Montgomery or Philadelphia Counties by purchasing branches from the merged bank.

(c) There is a substantial bank with branches confined to a portion of Philadelphia County which might be interested in expanding further by purchasing branches.

(d) There is a very substantial bank in Berks County which has just acquired a Montgomery County branch and might be interested in acquiring more, or even in moving its headquarters to Montgomery County.

(e) A finance company or a bank not now active in local automobile dealer-paper could enter that field as a substantial competitive force by purchasing the appropriate assets of the consumer finance division of the merged bank.

Any such divestiture could be protected by covenants preventing the merged bank from competing with the divested business or from acquiring an equivalent business through merger or purchase.

16. In suggesting the divestiture possibilities outlined in paragraph 15, we have assumed that a sale of a branch would include transfer of the physical assets (owned or leased), together with the list of depositors using the branch and the loans of local customers. The divesting bank might

further agree not to solicit depositors of the branch for a reasonable period. We also believe that the local automobile dealer business can be transferred as a going concern.

17. In suggesting the divestiture possibilities described in paragraph 15, we have taken into consideration the fact that not all the potential purchasers would be able to finance the purchase from existing resources. While it is not possible to foresee the state of the money market a year or two hence, it should be noted that the purchaser will be acquiring established assets with a history of successful operations. It is reasonable to expect that financing would be available to acquire such assets if the price were attractive in relation to actual and potential earnings.

18. No contention has been made that there will be any adverse competitive effects from the merger of Central-Penn's trust department (with trust assets of less than \$200 million) into Provident's trust department (with trust assets over \$2 billion). However, to avoid misunderstanding, we point out that trust assets cannot be considered subject to divestiture. The reasons are (a) the beneficiaries of the trust and the Orphans Court may not approve the transfer, which would inevitably be from a larger to a smaller trust department; (b) accounting, guardian ad litem and other fees would impose a substantial cost on the transfer; and (c) there could be no assurance that trust department personnel would move to the transferee bank. Similarly, we point out that it is not practicable to transfer the business of substantial corporate and financial customers, who have a wide range of choice of banking connections in Philadelphia and elsewhere.

This affidavit is based upon the experience and knowledge of each of the undersigned as to the Bank of which he is President, supplemented by consultation with personnel

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Exhibit A to Memorandum

at Provident and Central-Penn, and the facts stated herein are correct to the best of the knowledge, information and belief of the undersigned.

WILLIAM G. FOULKE,
William G. Foulke,

HAROLD F. STILL, JR.,
Harold F. Still, Jr.

Sworn to and subscribed before me this 10th day of January, 1967.

MARION K. CHARLES,
Notary Public, Philadelphia, Phila. Co.,
My Commission Expires November 6, 1967.

SCHEDULE A

LEADING PHILADELPHIA COMMERCIAL BANKS
COMPARISONS OF GROWTH IN DEPOSITS AND EARNINGS
(000 omitted)

| | Total Deposits | | Net Operating Earnings After Federal Income Taxes | |
|-------------------------------------|----------------|-------------------|--|----------------|
| | 12/31/66 | 12/31/65 Increase | 1966 | 1965 Increase |
| <i>Reserve City Banks</i> | | | | |
| First Pennsylvania | \$1,577,843 | \$1,458,500 8.2% | \$15,109 | \$13,453 12.3% |
| Philadelphia National | 1,457,081 | 1,292,155 12.8 | 12,876 | 11,692 10.1 |
| Girard Trust | 1,140,452 | 1,013,350 12.5 | 12,031 | 10,918 10.2 |
| Fidelity Philadelphia | 872,137 | 790,743 10.3 | 9,404 | 8,084 16.3 |
| Average of Four Banks named above | | 10.8 | | 11.9 |
| <i>Provident National</i> | 662,448 | 627,125 5.6 | 7,818 | 7,397 5.7 |
| Central Penn National | 346,678 | 332,977 4.1 | 2,891 | 2,857 1.2 |
| Provident and Central Penn Combined | 1,009,126 | 960,102 5.1* | 10,709 | 10,254 4.4 |
| <i>Montgomery County Banks</i> | | | | |
| Continental | 383,539 | 328,469 16.8 | 4,525 | 3,924 15.3 |
| Industrial Valley | 225,536 | 195,445 15.4 | 2,020 | 1,733 16.6 |

Based on Comparative Statements of Philadelphia Banks—The Philadelphia Inquirer, January 9, 1967

SCHEDULE B

COMPARISON OF BRANCHING ACTIVITY
FOR SELECTED PHILADELPHIA BANKS,
FOR PERIOD JANUARY 1 THROUGH DECEMBER 31, 1966.

| | Provident National Bank | Central Penn N.B. | Fidelity Phila. Trust | First Penna. " | Girard Trust Bank | Phila. Nat'l Bank | I V B | Continental Bank |
|---|-------------------------------|-------------------------|-----------------------------|----------------------|-------------------------|-------------------------|-------------|---------------------|
| Offices as of 12/31/65 | 31 | 24 | 47 | 47 | 49 | 38 | 23 | 37 |
| Offices opened in 1966 | 2 | 0 | 3 | 5 | 2 | 0 | 1 | 2 |
| Offices obtained by merger 1966 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 0 |
| Applications for new offices approved but not opened | 1 | 0 | 4 | 3 | 7 | 3 | 4 | 0 |
| Application filed awaiting decision | 0 | 0 | 3 | 1 | 0 | 1 | 0 | 0 |
| | — | — | — | — | — | — | — | — |
| Total | 34 | 24 | 57 | 56 | 58 | 42 | 31 | 39 |

SCHEDULE C

COMPARISON OF STOCK PRICES
FOR SELECTED PHILADELPHIA BANKS
AS OF SEPTEMBER 30, 1966

Price Times Earnings (12 Months Ended 9/30/66)

| | |
|---|------|
| 1. Provident National Bank | 9.6 |
| 2. Central-Penn National Bank | 9.8 |
| 3. The First Pennsylvania Banking & Trust Co. | 10.1 |
| 4. The Philadelphia National Bank | 10.1 |
| 5. Girard Trust Bank | 10.3 |
| 6. Fidelity-Philadelphia Trust Co. | 10.5 |
| 7. Continental Bank and Trust Co. | 11.8 |
| 8. Frankford Trust Co. | 13.3 |
| 9. Industrial Valley Bank and Trust Co. | N.R. |

Average 8 Banks—10.7

Price as % of Book Value

| | |
|---|--------|
| 1. Central-Penn National Bank | 86.8% |
| 2. Provident National Bank | 91.8% |
| 3. The Philadelphia National Bank | 97.6% |
| 4. The First Pennsylvania Banking & Trust Co. | 99.3% |
| 5. Girard Trust Bank | 110.8% |
| 6. Fidelity-Philadelphia Trust Co. | 117.1% |
| 7. Continental Bank and Trust Co. | 123.4% |
| 8. Industrial Valley Bank and Trust Co. | 147.1% |
| 9. Frankford Trust Co. | 197.6% |

Average 9 Banks—119.06%

Source: Stroud Report

SCHEDULE D
COMPARISON OF CORRESPONDENT BANK DEPOSITS
OF PENNSYLVANIA BANKS WITH SUCH DEPOSITS OVER \$500,000
(000 omitted)

| | Sept. 20 or Sept. 30, 1966 | | | | | Sept. 30 or Oct. 13, 1965 | | | | | | | |
|---|----------------------------|------------|------------|-------------------------|----------------------------------|---------------------------|-------|-------|--------------|------------|------------|-----------------------|----------------------------------|
| | Due to Banks | | Fgn. \$ | Total Deposits \$ | D. to B. to T'tl Dep. % | No. Corresp. | | | Due to Banks | | | Total Depos. \$ | D. to B. to T'tl Dep. % |
| | Total \$ | Dom. \$ | | | | Total | Dom. | Fgn. | Total \$ | Dom. \$ | Fgn. \$ | | |
| PENNSYLVANIA | | | | | | | | | | | | | |
| Philadelphia National Bank | 226,052 | 199,551 | 26,501 | 1,350,321 | 16.7 | ..... | ..... | ..... | 219,487 | 195,837 | 23,650 | 1,227,426 | 17.8 |
| 1st Pennsylvania Bkg. & T. Co., Phila. .. | 196,388 | 188,061 | 8,327 | 1,389,042 | 14.1 | ..... | ..... | ..... | 209,331 | 203,351 | 5,980 | 1,345,982 | 15.5 |
| Girard Trust Bank, Philadelphia | 81,216 | 76,594 | 4,622 | 1,055,076 | 7.7 | 452 | 302 | 150 | 86,824 | 81,345 | 5,479 | 955,766 | 9.1 |
| Provident National Bank, Philadelphia .. | 42,396 | 40,375 | 2,021 | 636,956 | 6.7 | 327 | 261 | 66 | 55,246 | 53,104 | 2,142 | 616,742 | 8.9 |
| Fidelity Philadelphia Trust Co. | 40,031 | 34,306 | 5,724 | 837,994 | 4.8 | 359 | 223 | 136 | 49,748 | 44,756 | 4,992 | 758,152 | 6.5 |
| Central-Penn Nat'l Bk., Philadelphia ... | 18,247 | 18,017 | 230 | 332,977 | 5.4 | ..... | ..... | ..... | 25,744 | 25,504 | 240 | 327,070 | 7.7 |
| Northeastern Pa. NB&T Co., Scranton .. | 7,452 | 7,446 | 6 | 199,802 | 3.7 | 49 | 48 | 1 | 7,753 | 7,749 | 5 | 187,539 | 4.1 |
| First National Bank, Wilkes-Barre | 7,377 | 7,377 | .... | 96,020 | 7.7 | 53 | ..... | ..... | 7,982 | 7,982 | .... | 87,728 | 9.1 |
| Industrial Valley B&T Co., Jenkintown . | 1,720 | 1,720 | .... | 192,933 | 0.9 | 21 | 21 | .... | 8,239 | 8,239 | .... | 194,840 | 4.2 |
| Third National B&T Co., Scranton | 695 | 695 | .... | 58,124 | 1.2 | 10 | 10 | .... | 445 | 445 | .... | 53,642 | 0.8 |
| Miners National Bank, Wilkes-Barre ... | 558 | 558 | .... | 122,762 | 0.5 | 3 | 3 | .... | .... | .... | .... | .... | .... |

Source: The "American Banker," 1966 Correspondent Bank Survey